

Valkyrie Law Group LLP

Local Government Elected Officials: Legal Overview of Community Charter & Local Government Act

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1. Sources of Power


- The Dartmouth Port Authority thinks cruise ship passengers would flock to a local bowling alley. The PA leases space to Bowl-A-Way to build an alley. Bowl-A-Way offers free rental bowling shoes. Can the local municipality stop this development?

1. Sources of Power

- *Constitution Act, 1867* – divides jurisdiction between federal and provincial governments
- *Community Charter* and *Local Government Act* – delegate powers to municipalities and regional districts
- Other legislation, e.g., *Environmental Management Act*, *Freedom of Information and Protection of Privacy Act*, *Land Title Act*, *Vancouver Charter*, private legislation


2. Authority Limitations

- Drug-upped vagrants are becoming a problem in the Town of Plenty, and residents want something done. Can Council enact any laws to run these losers out of town?




2. Authority Limitations

- Constitutional limits
 - federal jurisdiction: shipping, airports, criminal law
- Charter of Rights and Freedoms
 - all local governmental actions must comply with Charter provisions
- Provincial legislation
 - bylaws subordinate to provincial legislation
 - Human Rights Code



3. Concurrent Jurisdiction

- Health-nut council members on Orange Town council want to require everyone in town to take at least one multi-vitamin a day, believing this will reduce the spread of seasonal influenza. Are they going too far?




3. Concurrent Jurisdiction


- Authority subject to concurrent jurisdiction with Province on health, environment, animals, buildings, soil removal
 - approval of relevant ministry required for concurrent jurisdiction bylaws, except where regulation adopted, e.g. pesticides
- Municipal and RD bylaws – no effect if inconsistent with Provincial laws
 - “inconsistent” - compliance with bylaw does not contravene other enactment

4. Property Disposition

- After providing public notice of a recent sale of land to a neighbouring nudist colony, the Open Valley Regional District was inundated with letters from incensed electors.
- Can the incensed electors challenge the validity of the sale?



4. Property Disposition



- Sale of municipal property (s. 26 CC)
 - notice required before disposition
 - no general requirement to make property available to the public for acquisition
- Regional districts (s. 186 LGA)
 - notice required before disposition
 - must make available to the public, except disposition to not for profit corporation, public authority, land exchange, partnering agreement, owner of adjoining land

5. Prohibition on Assistance

- Wanting to provide more child care options in the City, Council leased the basement of its community center to Ms. Patience for \$1/year so that she could operate a day-care facility. Soon fed up with screaming children, Ms. Patience assigned her lease to Kids & Co.



- Has the City contravened the law?

5. Prohibition on Assistance

- No assistance to businesses, unless under partnering agreement
- Assistance includes:
 - disposing of land for less than FMV
 - lending money
 - guaranteeing repayment of borrowing
 - granting an exemption from a tax or fee
- Notice required of authorized assistance





6. Elector Approval

- The City of Rainmore entered into a 10 year agreement with a neighbouring First Nation for the supply of water services. Council conducted a community poll prior to signing the agreement, to ensure that it had the support of its residents.



- Any issues?

6. Elector Approval



- Alternative approval process (s. 86)
 - former counter petition
 - 10% of elector responses is threshold
 - required for certain bylaws, e.g. capital liabilities in agreements exceeding 5 years, certain borrowing bylaws
- Elector consent (referendum) - occasionally required, always optional

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7. What is a Meeting?

Goofville Town council wants to hold a council meeting in Las Vegas (there are a few gamblers on Council, and hey, what happens in Vegas stays in Vegas!).



Are they out to lunch?

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7. Meetings



- Regular meetings – must advertise
- Special meetings – rules for calling
- Closed meetings – resolution required at public meeting
- What is a meeting?

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8. Closed Meetings

- The Board recently closed its meeting to discuss a litigation matter. For once, members were all on the same page. Taking advantage of the “collegial atmosphere”, the Chair tabled a number of other controversial matters for discussion, including a potential expropriation and a proposal to ban pit-bulls.

- Any problems?



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8. Closed Meetings

- Council meetings may be closed to the public to discuss
 - labour relations or employee negotiations
 - law enforcement matters
 - the acquisition or disposition of property
 - receiving legal advice
 - potential litigation



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9. Attendance at Meetings

- Councillor Jones missed two board meetings while vacationing in Mexico. Having drank way too many margaritas, she fell ill and missed 2 more meetings. At the 5th meeting, the Chair prohibited her from voting and said “you are outta here!”
- Can the Chair do this?



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9. Attendance at Meetings

- Automatic disqualification if absent from meetings for 60 consecutive days or four consecutive regularly scheduled meetings, whichever is longer

- Exceptions: illness, injury, absence with leave of council/board

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10. Member Duties

- Council has passed a resolution banning the Mayor (a prolific commentator on local events) from using the City's website to post her letters to the editor.

- Can council do this?




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10. Member Duties

- Duties of council members (s. 115)
 - consider well-being and interests of municipality and its community
 - contribute to the development and evaluation of policies and programs
 - participate in council meetings, committee meetings and meetings of other bodies where appointed
 - carry out other duties assigned by council
 - carry out other duties assigned by legislation

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11. Mayor/Chair Duties




- Duties of mayor (s. 116)
 - provide leadership to the council, including recommending bylaws, resolutions
 - communicate information to council
 - preside at council meetings
 - provide general direction to municipal officers re implementation of policies and programs of municipality
 - establish standing committees
 - suspend municipal officers and employees
 - reflect the will of council and carry out other duties assigned by council
 - carry out other duties assigned by legislation

12. Fiduciary Duties

- The Regional District's CFO, who loves going to the track, tells the Board that he has "a tip on a great horse". Having had a good year selling surplus property, the Board authorizes the CFO to place a \$20K bet using the Regional District's "rainy day" reserve fund.




- Problems?




12. Fiduciary Duties

- Personal liability for expenditures contrary to law
- Exception where member relied on information from an officer or employee who was guilty of dishonesty, gross negligence or malicious or wilful misconduct




13. Confidentiality

- The Town of Pleasantville was in the process of negotiating for the acquisition of a large piece of industrial property. While golfing with his neighbour, the Mayor, Bob Loblaw, let it slip that the Town could probably “go as high as \$800K”.
- Any issues?




13. Confidentiality

- Confidentiality
 - Members must
 - keep in confidence any record held in confidence
 - keep information received in closed meeting confidential
 - If confidentiality breached and loss results, local government may recover from member



14. Voting at meetings

Councillor Jones likes to ride the fence, and hates committing himself at meetings. He ducks whenever a vote is called. Is he avoiding the issues?



14. Voting at Meetings

- Duty to vote if present
- If no indication, deemed “yes”
- If votes equal for and against, motion is defeated

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14. Voting at Meetings

- Majority vote for most matters
- 2/3 vote of all Council/Board members for certain matters:
 - delegation of authority
 - termination of an officer
 - indemnification
 - emergency powers bylaw

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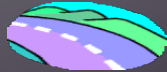
14. Voting at Meetings

- Unanimous vote (rare):
 - re-introducing bylaw or resolution rejected within 6 months after reconsideration
 - waiving notice of a special meeting
 - conferring the honour of “freedom of the municipality”

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15. Reconsideration

A couple of council members are absent at a critical meeting. When they return, they object to the prior decision by Council to paint all the roads pink. Are they out of luck to overturn this cool decision?



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15. Reconsideration



- Reconsideration (s. 131)
 - mayor may require council to reconsider any matter whether previously adopted or rejected
 - at the same council meeting or within 30 days
 - except where
 - matter has had approval or assent of the electors
 - previous reconsideration
 - no limitation where action taken by municipality
- Statutory power of mayor does not eliminate inherent power of council to reconsider
- Subject to procedure bylaw rules

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16. Bylaw Procedures

- While speaking at the grand opening of the new Masonic Lodge, Mayor Green committed council to granting the Masons a 10 year permissive tax exemption. Can he do this?



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16. Bylaw Procedures

- Councils/boards make decisions by resolution or bylaw
- Local Government Act
 - bylaws where required / all other decisions may be by resolution
- Bylaws are
 - deliberative and formal procedure: 3 hearings and adoption
 - may include a public hearing requirement (e.g. zoning bylaws)
 - may require external consent

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17. Statutory Officers

- The CFO was caught with his hand in the “cookie jar”. However, when Council voted on the CFO’s termination, only 3 of the 7 members voted in favour of termination.
- Are they stuck with him?




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17. Statutory Officers


- Statutory Officers: corporate, financial
- Chief Administrative Officer – by bylaw
- Other officers may be designated by bylaw
- Termination:
 - for cause – immediate termination without notice
 - in any other case, on reasonable notice
- Termination of officer without cause requires 2/3 vote of all members

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18. Interference

- Councillor Smart, an avid cyclist, regularly asks the town's planner to expedite development permits and approvals for residents who bike to work. These are the benefits of "being green"! Can she do this?




18. Interference

- Members are prohibited from interfering, hindering or obstructing an officer or employee in the performance of his/her duties
- CAO duties: operational management, policy implementation, advising
- Mayor/Chair duties: general direction to officers regarding implementation of policies

19. Delegation

- The Board delegated responsibility for hiring and firing employees to the CAO. When faced with firing the district planner, who was also the CAO's bowling partner, the CAO called in sick and had the CFO carry out the termination instead – whew!





19. Delegation

- Council/board may delegate powers, duties and functions to member, committee, officer, employee, other body
- May not delegate:
 - making of a bylaw
 - power/duty exercisable only by bylaw
 - power/duty to give approval, consent
 - power/duty to hear appeals or reconsider an action or decision
 - power/duty to terminate officer
 - power to impose a remedial action requirement

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20. Liabilities Under Agreements

The City Manager has committed Redfern City to a 10-year contract to purchase pencils from Lead Industries, since he thinks their erasers are great. Can he do this?

Can Council overturn his decision?



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20. Liabilities Under Agreements

- *Community Charter* - s. 175
 - from 5 year rule – elector approval required
 - regulatory exception
 - for operational liability
 - for capital liability where cost of servicing aggregate liabilities less than 25% of annual calculation revenue
 - partnering agreement concept
 - includes nature of the activity, work or facility, maximum term, maximum liability and any other information required by regulation

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21. Financial Matters

- Permissive exemptions (s. 224)
 - broader exemptions for charitable, philanthropic and not for profit corporations – if council considers land used for related purpose
 - land or improvements owned by a municipality, regional district or other local authority and used for the purpose of the local authority
 - majority vote for permissive exemptions, not 2/3 vote
 - may exempt for up to 10 years, without electoral assent

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21. Financial Matters

- Notice required in advance of adoption that
 - identifies property
 - describes proposed exemption
 - states number of years of exemption
 - estimates foregone tax for each of first 3 years

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22. Revitalization

- Times are tough and the local mill has threatened to close. Jobs in the community are scarce and the City is panicking. Is there anything the City can do?



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22. Revitalization

- Permissive exemption available for "revitalization"
 - must be in a designated area (financial plan or OCP)
 - new improvement or alteration of existing improvement
 - applies only to municipal property taxes
 - exception to s. 25 CC – general assistance prohibition
 - 10 year maximum

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23. Public Hearings

- Notice requirements
- Information must be made available to the public
- No new information to Council members after public hearing
- Clarification from staff permitted

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23. Public Hearings

Mrs. Smith is a known crank and council watcher who likes to attend public hearings in the neighbouring city, although she doesn't live there. Can she insist on complaining at the hearings?



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23. Public Hearings

- Presiding member determines procedure
- Everyone who believes they are affected has the right to be heard
- May limit time for each speaker



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23. Public Hearings

- Report of public hearing
 - must state views expressed
 - required before a member who did not attend may vote
 - ensure accuracy – or attach minutes of public hearing



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24. First Nations Update

- Implications of *Tsilhqot'in* decision (SCC)
- Types of First Nation land interests
 - Aboriginal title, reserve lands, treaty settlement lands, fee simple lands
- Duty to consult and application to local governments
- Protocols, servicing agreements, relationship building



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