

DO B.C. LOCAL GOVERNMENTS NEED AN INTEGRITY COMMISSIONER?

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LGLA 2016 Leadership Forum



What I'm Not Here For

- Not here to demonize elected officials
- Not here to unjustly criticize elected officials



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What I Am Here For

- Discuss better ways to educate and support elected officials
- Discuss better ways to investigate and sanction elected officials, when necessary
- Convince you that adopting Codes of Conduct for elected officials and an Integrity Commissioner to enforce these Codes of Conduct would be a positive step for local government, the public and elected officials

What's The Problem?

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."¹

¹The Globe and Mail "Mayors Behaving Badly: Cities strain to hold leaders accountable" Monday, January 13, 2014, p. A8

What's The Problem? (cont.)

Some Canadian Examples

- In Laval, Que., former Mayor Gilles Vaillancourt faced criminal charges including gangsterism, while corruption-plagued Montreal had four mayors in just over a year.²
- In Ontario, London Mayor Joe Fontana was on trial on charges of fraud.²
- Toronto Mayor Rob Ford openly admitted to using crack cocaine while in one of his "drunken stupors," though he was not charged with any crime.²

²*Globe and Mail, supra*

What's The Problem? (cont.)

Some B.C. Examples

- *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
 - BCSC and BCCA upheld conviction
- *R. v. Scott Young*
 - Former Mayor of City of Port Coquitlam
 - Convicted of assault x2 in 2008
 - Termination of relationship with girlfriend
 - Continued in Mayor's office while prosecution went forward

What's The Problem? (cont.)

Some Further B.C. Examples

In 2015, further publically reported B.C. examples include:

- Four of seven councillors in Lantzville resigned leaving the town without enough Councillors to convene a meeting³;
- A White Rock Councillor was censured after publishing comments that City lawyers considered to be defamatory³;
- Volunteer firefighters in Chase complained about bullying by the Mayor³;
- The Pouce Coupe Mayor contacted the RCMP to spur removal of images posted as part of an ongoing dispute with a former elected official³;
- The Mayor of Saanich admitted that he misled the media about an extramarital affair, and subsequently made complaints of misconduct against police and staff at City Hall³;

What's The Problem? (cont.)

- The Mayor of White Rock called the RCMP to City Hall in an attempt to remove a former council member from the premises after a verbal altercation over a proposed development application³; and
- A Central Okanagan Regional District Director was publically censured for divulging confidential information³.

These examples illustrate a range of concerns local governments may face with the behaviour of a small percentage of their elected officials.

³The Vancouver Sun "Bitterness lingers as Lantzville's Council Implodes" by Rob Shaw, May 27, 2015

³Peace Arch News. "White Rock councillor censured over online defamation" by Melissa Salley, April 28, 2015. Updated Apr. 28, 2015

³CBC News. "Volunteer Firefighters in Chase, BC being bullied by Mayor says complainant" by Doug Herbert, June 19, 2015

³Alaska Highway News. "Tensions Flare in Pouce Coupe council dispute." by Johnny Wakefield, June 18, 2015.

³The Globe & Mail. "BC Mayor admits he lied to hide extra marital affair." by Justine Hunter, January 12, 2015

³Peace Arch News. "White Rock mayor calls in RCMP to eject former councillor" by Melissa Smalley, September 29, 2015

³Kelowna Capital News. "Central Okanagan regional director censured by colleagues", December 16, 2015

What Can A Local Government Do?

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

- for the more serious behaviour we have statutory provisions in the *Community Charter*
- s.101 to 103 *Community Charter*; conflict of interest and inside/outside influence
- s. 109 *Community Charter*; disgorgement process
- s. 110 *Community Charter* ; disqualification from office
- s.111 *Community Charter*; BCSC order

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.)

- But when elected officials' behaviour is more associated with:
 - Bullying
 - Harassment
 - Rude comments
 - Pressuring employees
 - Disrespectful attitude/tone
 - Privacy breaches
 - Closed meeting breaches
 this creates ongoing governance challenges for local governments

- Local governments are resorting to censure motions

What Can A Local Government Do? (cont.)

C. Censure Motions

- Council/Board driven process; Court's have recognized this process:
- *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."

What Can A Local Government Do? (cont.)

C. Censure Motions (cont.)

- *Skakun v. Prince George (City)* 2011 BCSC 1796
 - “By my reading of the Community Charter, it is reasonable to imply council have an obligation to regulate a councillor’s misconduct when there is a substantial falling away from the expected standard...In sum then, I find there is an implied power in council to regulate misconduct of a councillor that falls short of disqualification.”*

- Procedural fairness is required

What Can A Local Government Do? (cont.)

- Censure process has some negatives, including:
 - Staff vs. Elected officials
 - Elected officials vs. Elected officials
 - Procedurally cumbersome
 - Costs; lawyers
 - Not always effective
 - Limited viable outcomes

- Censure process also has some positives

What's Happening Elsewhere?

- Ontario amended *Municipal Act* in 2006
- Enabled local governments to adopt Codes of Conduct for elected officials
- Enable local governments to appoint Integrity Commissioners to enforce Code of Conduct
- Investigative powers
- Access elected officials' records
- Reprimand or up to 90 day pay suspension
- 422 Ontario local governments/45 have Integrity Commissioners

What's Happening Elsewhere? (cont.)

- City of Toronto
- First Integrity Commissioner in Canada; 2004
- Broad functions assigned by City Council:
 - Advisory
 - Compliance Investigations
 - Reporting
 - Education
- Several other large Ontario local governments have Integrity Commissioners as well (eg. London/Vaughan/Mississauga)
- City of Calgary recently created Office of the Integrity Commissioner⁴; first west of Ontario

⁴Calgary Herald, Dec. 14, 2015 "Selection Committee poised to name council's first Integrity Commissioner".

What About B.C.?

New Community Charter Provisions?

- Statutory censure motions? Pros vs. Cons
- Expand disqualification provisions? Pros vs. Cons
- Allow adoption of enforceable Council/Board Codes of Conduct and Integrity Commissioners?

What About B.C.? (cont.)

Advantages of Integrity Commissioner

- Negate need for censure/litigation
- Increase advisory opportunity for elected officials
- Increase education opportunity for elected officials
- Reduce formal complaints (eg., WorkSafe re bullying)
- Allow public access to process
- Force elected officials to focus on ethics
- Increase public confidence
- Reduce internal organizational conflict

What About B.C.? (cont.)

Disadvantages of Integrity Commissioner

- Unnecessary; current *Community Charter* provisions and censure process works well
- Just another “babysitter”
- More bureaucracy
- Cost
- Is the Integrity Commissioner really independent?
- Sanctions are a slap on the wrist

Discussion

