

**LOCAL GOVERNMENT LAW 101**  
**LGLA 2019 ELECTED OFFICIALS SEMINAR**

JANUARY 16 AND 17, 2019

# Overview

- 1. Legislative Framework**
- 2. Roles of Elected Officials**
- 3. Conflict of Interest**
- 4. Open and Closed Meetings**
- 5. Conclusions and Questions & Answers**



# INTRODUCTION

- purpose of today is to provide a high level overview on four topic areas
- *not* a comprehensive review of the law
- local government law is a complex mixture of public and private law concepts
- getting more complex
- lots of opportunity for questions and discussion

# 1. LEGISLATIVE FRAMEWORK

1.1 *Community Charter & Local Government Act*

1.2 The Role of Other Legislation

1.3 *Charter of Rights and Freedoms*

1.4 Municipal Corporations

1.4.1 Creature of Statute

1.4.2 Natural Person Powers



# 1.1 *Community Charter & Local Government Act*

- *Local Government Act* and *Community Charter* are provincial legislation
- create municipalities and regional districts
- assign powers, responsibilities and obligations of local government
- covers a myriad of topics including:
  - municipal purposes
  - public participation
  - financial management
  - municipal revenue
  - bylaw enforcement
  - government relations
  - elections
  - planning/land use management
- taken together the *Local Government Act* and *Community Charter* have well over 1000 sections



# 1.1 *Continued*

- local government bylaws must fall within an area constitutionally allocated to the Province
- local government 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*

# 1.2 The Role of Other Legislation

- *Local Government Act* and *Community Charter* do not stand alone
- other provincial legislation give and limit local government powers
- too numerous to list but include:
  - *Environment Management Act*
  - *Fire Services Act*
  - *Freedom of Information and Protection of Privacy Act*
  - *Health Act*
  - *Land Title Act*
  - *Motor Vehicle Act*
  - *Strata Property Act*

# 1.3 *Charter of Rights and Freedoms*



- constitutionally guaranteed set of civil liberties that are so important they receive protection from government action
- supreme law of Canada
- includes freedom of expression; religion; press; assembly; life, liberty, and security of person
- applies to local government bylaws
- *Victoria v. Adams*, [2009] BCCA 563
  - city park bylaw
  - prohibited persons from erecting temporary structures in parks
  - court found violated “right of life, liberty and security of person” as not enough shelter beds in Victoria
- local governments should recall their laws are subject to *Charter of Rights and Freedoms*

# 1.4 Municipal Corporations

## 1.4.1 Creature of Statute

- local governments derive authority from statute (eg. *Community Charter, Local Government Act* and *Motor Vehicle Act*)
- some powers are general (eg.: power to regulate, prohibit or impose requirements in relation to animals)
- some powers are specific (eg.: a council may by bylaw ... provide for the seizure of unlicensed animals)

# 1.4 Municipal Corporations

## 1.4.2 Natural Person Powers

- Municipalities given “natural person” powers under *Community Charter*
- s.8(1) reads:

### **Fundamental powers**

*8 (1) A municipality has the capacity, rights, powers and privileges of a natural person of full capacity.*

- this power has been read broadly by the Courts
- gives us broadened authority to achieve municipal purposes
- Note: Regional Districts have specifically listed corporate powers

## 2. ROLES OF ELECTED OFFICIALS

### 2.1 Powers Exercised by Council/Board

#### 2.1.1 Responsibilities of Council/Board

### 2.2 Councillors/Directors

#### 2.2.1 Responsibilities of Councillors/Directors

### 2.3 Rights and Powers of Mayor/Chair

#### 2.3.1 Responsibilities of Mayor/Chair

### 2.4 Concluding Thoughts

# 2.1 Powers Exercised by Council/Board

- powers of the local government are generally exercised by the council/board
- section 114(3) *Community Charter* reads:

## **Council as governing body**

*(3) The powers, duties and functions of a municipality are to be exercised and performed by its council, except as otherwise provided under this or another Act, and a council, in exercising or performing its powers, duties and functions, is acting as the governing body of the municipality.*

- council may delegate *by bylaw* some of its powers to a council member, committee, officer or employee or other body
- certain powers cannot be delegated:
  - making of a bylaw
  - duty exercisable only by bylaw

# 2.1.1 Responsibilities of Council/Board

- primary responsibility is to exercise powers under statute in a manner that represents the best interest of the local government and its residents
- council/Board adopts policies that give shape to this and directs officers and employees to implement
- generally, Council/Board decides how to best achieve this
- some duties are imposed:
  - *procedure bylaw*
  - *officer positions*
  - *annual financial plan*
  - *auditor*
  - *tax rate bylaw*
  - *OCP consultation opportunity*



## 2.2 Councillors/Directors

- individual councillors/directors have no powers under *Community Charter/Local Government Act*
- only when sit as council/board in a meeting that they have powers
- do have some specific powers:
  - *right to participate/vote at a meeting*
  - *call for “special meeting”*
  - *sit on special and select committees*
  - *if delegated powers by the council*

# 2.2.1 Responsibilities of Councillors

- Section 115 *Community Charter* reads:

## **Responsibilities of council members**

*115 Every council member has the following responsibilities:*

- (a) to consider the well-being and interests of the municipality and its community;*
- (b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities;*
- (c) to participate in council meetings, committee meetings and meetings of other bodies to which the member is appointed;*
- (d) to carry out other duties assigned by the council;*
- (e) to carry out other duties assigned under this or any other Act.*

- Other special duties include:
  - declaring conflicts of interest
  - filing disclosure statements re gifts
  - keeping certain information confidential
  - voting at meetings
- Notably, does not speak to the administration of the local government

## 2.3 Rights and Powers of Mayor/Chair

- have all rights of a councillor/director as well as:
  - *can call a special meeting*
  - *require council reconsideration*
  - *chairs all council meetings*
  - *can expel persons from meetings for improper behaviour*
  - *establish standing committees*
  - *may declare a state of emergency*

# 2.3.1 Responsibilities of Mayor/Chair

- section 116 of the *Community Charter* reads:

## Responsibilities of mayor

**116** (1) *The mayor is the head and chief executive officer of the municipality.*

(2) *In addition to the mayor's responsibilities as a member of council, the mayor has the following responsibilities:*

- (a) *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;*
- (b) *to communicate information to the council;*
- (c) *to preside at council meetings when in attendance;*
- (d) *to provide, on behalf of the council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the council;*
- (e) *to establish standing committees in accordance with section 141;*
- (f) *to suspend municipal officers and employees in accordance with section 151;*
- (g) *to reflect the will of council and to carry out other duties on behalf of the council;*
- (h) *to carry out other duties assigned under this or any other Act.*

- notably, does not speak to the administration of the local government
- applies to Chair as per s. 216 *Local Government Act* generally

## 2.4 Concluding Thoughts - 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

# 3. Conflict of Interest

3.1 What is a conflict of interest?

3.2 Declaration of conflict

3.2.1 *Community Charter* section 100 (2) & (3)

3.3 Financial Conflicts

3.3.1 *Community Charter* section 101

3.4 Other Personal Interest Provisions

3.4.1 *Community Charter* section 102-103 & 105-108

3.5 Exceptions

3.5.1 *Community Charter* section 104

3.6 Disqualification

3.7 Tips on Handling Conflicts

# 3.1 What is a conflict of interest?

- conflict of interest law is about appearances
- aimed at avoiding the potential for an elected official to be influenced by personal interest
- a court will ask whether a reasonably well-informed person would conclude that the elected official's personal interest in a matter might influence the elected official in the exercise of his or her duty as an elected official
- it is critical that elected officials approach potential conflicts from this perspective
- it does not matter whether the elected official believes that he or she can remain impartial
- it does not matter whether the elected official is not in fact influenced by their personal interest
- conflict of interest law is about preserving the integrity of council/board and its decision making processes



## 3.2 Declaration of Conflict

- *Community Charter* section 100(2) and (3) reads:

### *Disclosure of conflict*

*100 (2) If a council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the member has*

*(a) a direct or indirect pecuniary interest in the matter, or*

*(b) another interest in the matter that constitutes a conflict of interest,*

*the member must declare this and state in general terms the reason why the member considers this to be the case.*

*(3) After making a declaration under subsection (2), the council member must not do anything referred to in section 101 (2) [restrictions on participation].*

- elected officials must make the declaration
- what does “considers” mean?
- except for financial interest under *Community Charter* section 101 there is no statutory consequence for non-pecuniary breach
- non-pecuniary conflicts are very important for governance concerns

## 3.3 Financial Conflicts

*Community Charter Section 101 (1) – (3) reads:*

***Restrictions on participation if in conflict***

**101** (1) *This section applies if a council member has a direct or indirect pecuniary interest in a matter, whether or not the member has made a declaration under section 100.*

(2) *The council member must not*

(a) *remain or attend at any part of a meeting referred to in section 100 (1) during which the matter is under consideration,*

(b) *participate in any discussion of the matter at such a meeting,*

(c) *vote on a question in respect of the matter at such a meeting, or*

(d) *attempt in any way, whether before, during or after such a meeting, to influence the voting on any question in respect of the matter.*

(3) *A person who contravenes this section is disqualified from holding office as described in section 108.1 [disqualification for contravening conflict rules] unless the contravention was done inadvertently or because of an error in judgment made in good faith.*

- what is a “pecuniary” conflict of interest?
- note scope of s. 101 (2) (d)
- what is “inadvertently” or “error in judgment”?

## 3.4 Other Personal Interest Provisions

- Inside influence
- Outside influence
- Accepting gifts
- Contracting with the local government
- Insider information

## 3.5.1 Exceptions to Conflict of Interest

- *Community Charter* section 104 creates a number of exemptions to a conflict of interest:
  - *common interest*
  - *local service*
  - *council remuneration*
  - *“remote or insignificant”*
  - *Conflict of Interest Exception Regulation*

## 3.6 Disqualification

- Expected that elected officials will voluntarily vacate office
- If not, the municipality *or* 10 electors can bring application in British Columbia Supreme Court
- 45 day limit to bring the application



## 3.7 Tips on Handling Conflicts

- consider any conflicts of interest broadly
- good governance demands this as does *Community Charter*
- if you have pecuniary conflict (whether direct or indirect) consider declaring as you can lose your office
- non-pecuniary should not be ignored. Why?
  - undermines governance
  - undermines council/board trust
  - undermines public confidence
- deal with conflict concerns early and often
- Seek training and education from experts
- speak with CAO or Director of Finance about how to provide support when conflict of interest concerns arise

# 4. Open and Closed Meetings

## 4.1 Open Meeting Rule

4.1.1 *Community Charter* section 89

## 4.2 Closed Meetings

## 4.3 Consequence of Breaching Open Meeting Rule

4.3.1 *London v. RSJ Holdings Inc.*

4.3.2 *Southam v. City of Ottawa*

## 4.4 Consequences of Breaching Closed Meeting Rule

4.4.1 *Community Charter* section 117

## 4.1.1 *Community Charter* section 89

- *Community Charter* section 89 creates open meeting rule
- default is council/board meeting should be open to the public
- grounded in Canadian democratic values of public accessibility
- council/board may *not* vote on a bylaw in a closed meeting
- violating would invalidate that reading of the bylaw

# 4.2 Closed Meetings

- *Community Charter* balances the need for open meetings with the need for council/boards to discuss certain matters in closed meetings
- *Community Charter* section 90 establishes when a meeting may be closed
- *Community Charter* section 90(2) says council must close meetings in very limited situations:
  - *Certain FOI applications*
  - *Confidential negotiations with senior level of government*
  - *Ombudsman investigation*
  - *Under another enactment must be closed*
- *Community Charter* section 90(1) says council may close for the following examples:
  - *Personal information regarding appointing officers/employees*
  - *Labour relations*
  - *Acquisition of lands*
  - *Law enforcement*
  - *Litigation*
  - *Legal advice*

# 4.3 Consequence of Breaching Open Meeting Rule

## 4.3.1 *London (City) v. RSJ Holdings Inc.*

- *Community Charter* does not detail legal consequences of breaching open meeting rule
- Courts will step in to sanction
- *London (City) v. RSJ Holdings Inc.*
  - City passed interim control bylaw for 1 year development freeze
  - council had 2 closed meetings and 1 eight minute open meeting where it adopted 32 bylaws
  - company affected by development freeze challenged bylaw
  - Court struck down the bylaw and stated:

*“The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law. When a municipal government improperly acts with secrecy, this undermines the democratic legitimacy of its decision, and such decisions, even when intra vires, are less worthy of deference.”*
- Court insisted on transparency

## 4.3.2 *Southam v. City of Ottawa*

- Council “retreat” to discuss capital expenditures; infrastructure; council functions and salaries
- All members of Council expect one present
- Many City staff present
- Court found “retreat” was in fact a meeting that should have been open to the public:

*“The key would appear to be the councillors are requested to 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 materials part of the decision-making process.”*

# 4.4 Consequences of Breaching Closed Meeting Rule

## 4.4.1 *Community Charter* section 117

- *Community Charter* section 117 reads:

### **Duty to respect confidentiality**

**117** (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.*

*(2) 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*

- carries forward after out of office
- Applies to directors as per s. 205 *Local Government Act*

## 5. WHAT CAN WE CONCLUDE FROM ALL THIS?

1. Local governments are delegated levels of government
2. Local governments derive authority from statute (and letters patent)
3. Local government laws must be consistent with Provincial laws
4. Local governments have broad powers  
(note difference between municipality/regional district)

## ... Cont.

5. Council/board is the governing body
6. Local governments exercise powers by bylaw or resolution
7. Local governments perform legislative, administrative and quasi-judicial roles
8. Local governments must act fairly and transparently

# QUESTIONS AND ANSWERS