

# A Handbook for Municipal Councils

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Under the Community Charter  
and the Local Government Act

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## **Constitutional Framework**

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### **Federal and Provincial**

The Constitution Act (formerly the BNA Act) divides legislative authority between the federal parliament and provincial legislatures by granting them separate spheres of authority, for example:

    federal - criminal law, banks, insolvency, foreign affairs

    provincial - local government, insurance, property matters

A B.C. case, *Comox-Strathcona Regional District v. Hansen*, discussed in the Summer 2005 issue of *LoGo NoteBook*, the Staples McDannold Stewart online newsletter at [www.sms.bc.ca](http://www.sms.bc.ca), illustrates the supremacy of federal legislation over local bylaws in matters of legislative power reserved to the Government of Canada under the Canadian Constitution.

## Legislative Origins of Local Government

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### Creation

Local government has no original legal capacity, i.e. no power to self-incorporate, but is a "creature of legislation". Municipal corporations are created by the provincial government, by a formal Act of the Legislature or by Letters Patent issued by the Lieutenant Governor in Council (the Cabinet).

A local government in British Columbia is more often incorporated by the issuance of Letters Patent. These establish the boundaries, the size of the Council and a number of start up matters, such as the timing of the first election. Some incorporation occurs by an Act, e.g. Resort Municipality of Whistler.

### Forms of Local Government

In B.C., local government takes the form of cities, towns, villages, districts, regional districts and improvement districts. Separate Acts govern other forms of local government, such as school boards and greater water and sewer boards. Section 17(1) of the *Local Government Act* classifies municipalities as follows:

17 (1) A municipality must be incorporated as follows:

- (a) as a village, if the population is not greater than 2 500;
- (b) as a town, if the population is greater than 2 500 but not greater than 5 000;
- (c) as a city, if the population is greater than 5 000;
- (d) despite paragraphs (a) to (c), as a district municipality if the area to be incorporated is greater than 800 hectares and has an average population density of less than 5 persons per hectare.

### Powers

While local governments do have legislative powers, i.e. the ability to pass bylaws, those powers are limited to the powers granted by the Legislature by way of statutes, such as the *Community Charter*, and other forms of legislation, such as orders in council.

Local governments now have "natural person" powers and some of the powers that corporations have generally, but of course, natural persons and ordinary corporations do not have legislative, taxation or regulatory powers. The provincial government must specifically grant these powers to local government.

## Governing Legislation

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### **The Community Charter<sup>1</sup>**

The *Community Charter* came into force on January 1, 2004 and replaced the *Local Government Act*, in respect of the establishment of the purposes, powers and governance of municipalities.

There is a misconception that the *Community Charter* sets no limits on municipal powers and that anything goes. Not so! There are many limitations in the Charter and the so-called “broad powers” have yet to be tested in the courts. Even the “natural person” powers, as applied in other provinces, are still relatively new and untested. In the taxi case out of Alberta, the Alberta court used the old rule of interpretation that a power has to be expressly granted, but the Supreme Court of Canada overturned this in favour of the “broad powers” approach.

### **The Local Government Act**

The *Local Government Act* continues to govern the incorporation procedures of local governments, amalgamations and boundary changes. It also governs the incorporation of and the purposes, powers and governance of regional districts and improvement districts. It continues to contain the procedures for local government elections, including referenda, as well as the powers and procedures for community development (planning and zoning).

### **Other Enactments**

Be aware that there are many other provincial statutes and numerous regulations affecting local government, for example:

*Financial Disclosure Act*

*Freedom of Information and Protection of Privacy Act*

*Motor Vehicle Act*

*Environmental Management Act*

*Fire Services Act*

*Health Act*

*etc*

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<sup>1</sup> The section numbers noted in this paper refer to the *Community Charter* unless otherwise indicated.

## **Unlawful Actions**

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### **Legal Limits**

A municipal council must know its legal limits before taking certain actions, for example, spending money on municipal services and other matters; enacting bylaws and passing resolutions to govern the conduct of its citizens; imposing taxes, fees and charges; disposing of its assets; and controlling property rights.

Typically, municipal officers have a good general knowledge of the limits on general powers and of the specific areas that they work in. Where there is any doubt, the municipal solicitor should be consulted for advice. This is also true for activities that are novel, complex or contentious or where council is averse to risk.

### **Consequences of Illegal Acts**

The consequences of a council taking any ultra vires (Latin for "beyond the law") action without having the necessary power to do so are serious. Such actions expose the municipality to litigation that can be very costly and often unnecessary. The Courts can declare bylaws invalid and award financial damages to persons who have incurred them because of unlawful actions by Council.

The costs can add up: in addition to paying damages, there are court costs and the fees of opposing counsel as well as the municipality's own. There is also the administrative downtime to be considered. Of course, all of this falls on the taxpayers so the effects can be political, as well.

In some cases an illegal act by a Council can result in a lawsuit against its individual members. For example, section 191 of the Community Charter states that a council member who votes for a bylaw or resolution authorizing the expenditure, investment or other use of money contrary to that Act is personally liable to the municipality for the amount, unless the council member relied on information supplied by a municipal officer or employee who was guilty of dishonesty, gross negligence or malicious or willful misconduct in that regard. The money may be recovered for the municipality from the council member, who will also be disqualified from holding office.

## Local Government Framework

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### Primary Roles

The structure of local government is divided into two primary roles: political (policy making) and administrative (day-to-day operations). The framework looks like this:

<b>Political</b>	<b>Administrative</b>
Council - policy makers	Municipal Officers
Mayor - chief executive officer (CEO)	Manager - chief administrative officer (CAO)

Examples of a Council's policy initiatives to direct the present and future operation of the community are:

- adopting a budget
- adopting an official community plan bylaw
- adopting zoning bylaws
- making policy resolutions

The Mayor provides, on behalf of Council, general direction to municipal officers respecting implementation of Council's policies, programs and other directions of Council.

The Administration puts the Council's policies into effect, under the coordination of the CAO, through such activities as:

- capital and operating expenditures as set out in the budget
- bylaw administration and enforcement
- administration of provincial and federal laws affecting local government.

Council members should respect the organizational structure of the municipality by recognizing the CAO's position as the liaison between Council and the Administration. If council members deal directly with other members of the Administration, they undermine the authority of the CAO and effectively cut the CAO "out of the loop". This will eventually make the organization dysfunctional.

## **Responsibilities of Mayor and Council**

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### **The Council (115)**

The members of Council, including the Mayor, have these statutory responsibilities:

- to consider the well-being and interests of the municipality and its community
- to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities
- to participate in council meetings, committee meetings and meetings of other bodies to which the member is appointed
- to carry out other duties assigned by the council
- to carry out other duties assigned by or under the *Community Charter* or any other Act

### **The Mayor (116)**

There are specific statutory duties and responsibilities assigned to the office of the mayor, in the mayor's capacity of chief executive officer (CEO) of the municipality, that are additional to those of the Council and the mayor as a member of Council, namely:

- providing leadership
- recommending bylaws, resolutions and other measures to assist in peace, order and good government of the municipality
- communicating information to council
- presiding at council meetings
- providing, on behalf of Council, general direction to municipal officers respecting implementation of Council's policies, programs and other directions of Council
- establishing standing committees of council
- suspending municipal officers and employees
- reflecting the will of council
- carrying out other duties on behalf of council
- carrying out other duties assigned by or under the *Community Charter* or any other Act

### **Duty to Respect Confidentiality (117)**

This was a matter that over the years most councillors respected. Unfortunately some councillors chose to disregard it, to the chagrin of their colleagues and municipal officers and sometimes at the expense of the taxpayers. As a result of lobbying by UBCM, this is a new statutory duty under the Charter. This duty applies to both current and former councillors.

In addition, the municipality has the statutory authority to sue to recover damages from a councillor whose breach of confidentiality results in loss or damage to the municipality.

The duty of each member of council is to keep in confidence

- any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required
- 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

## Important Features of a Council

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### Size of Council (118)

The *Community Charter* establishes the size of a council according to the type and population of a municipality as follows:

- Municipality or district over 50,000            mayor + 8 councillors
- Municipality or district less than 50,000    mayor + 6 councillors
- town or village                                    mayor + 4 councillors

Any change in size is based on the population as of January 1 in a general local election year and is effective for that election.

In addition, council may adopt a bylaw, at least 6 months before the next general local election, that changes its size to a mayor and 4, 6, 8 or 10 councillors. This bylaw becomes effective for that election and overrides the letters patent of the municipality.

If the bylaw reduces the number of council members or maintains it despite an increase in population that warrants an increase under the above formula, the bylaw must have the assent of the electors.

### Term of Office (119)

The term of office begins on the first meeting after the election and ends immediately before the first regular council meeting following a general local election, as provide under the council's procedure bylaw.

New under the *Community Charter* is the provision for continuity of the office of mayor. If the incoming mayor has not taken office by delivering the oath or affirmation of office to the corporate officer by the first regular council meeting after the local general election, the previous mayor continues to hold office until the successor takes office.

A similar transitional provision is provided if the number of incoming councillors is less than a quorum. In that case, the previous councillors continue in office along with the incoming members who have taken office (delivered their oath or affirmation) and, if the above paragraph also applies, the previous mayor. This could result in more than the statutory number of council members, but that is the compromise provided by the Act. It does not allow for picking and choosing among the previous council members to fill only the required number of vacant seats.

### Oath or Solemn Affirmation of Office (120)

The form and substance of the oath or solemn affirmation of office may be established by bylaw and may be different for the offices of mayor and councillor. If there is no bylaw, the form prescribed by provincial regulation will apply.

The oath or affirmation can only be made before a judge of the Court of Appeal, Supreme Court or Provincial Court, a justice of the peace, a commissioner for taking affidavits for British Columbia, the corporate officer or the chief election officer.

The oath or affirmation must be made within these time limits, as applicable:

- if elected by acclamation, within 50 days after general voting day
- if elected by voting, within 45 days after declaration of results of election
- if appointed to office, within 45 days of effective date of appointment

The completed oath or affirmation or a certificate of it must be produced to the corporate officer or the chief election officer before a person is eligible to take office as a council member.

**Resignation from Office (121)**

In order for a member of council to effectively resign, a written resignation must be submitted to the council at a council meeting or to the corporate officer at any time. The resignation takes effect from the date specified in the resignation or, if no date is specified, the date of delivery of it. Once delivered, a resignation may not be revoked.

## How Council Exercises Its Powers

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### **The Governing Body of the Municipality (114)**

Council consists of the Mayor and the councillors. It is a continuing body and may complete any proceedings started but not completed before a change in its membership, such as after a general election.

Only the Council can exercise the powers, duties and functions of a municipality, unless the Charter or another Act provides otherwise, but subject to delegation under section 154, discussed later in this paper. Council is acting as the governing body of the municipality when exercising or performing its powers, duties and functions.

The Council has all the necessary power to do anything incidental or conducive to the exercise or performance of its powers, duties and functions. In other words, if the Charter confers a power but does not spell out all of the activities that are part of the exercise of the power, this section fills in the blanks.

### **Delegation of Authority (154)**

Council may delegate its powers, duties and functions by bylaw, except the following:

- the making of a bylaw
- a power or duty exercisable only by bylaw
- a power or duty established by the Charter or another Act or regulation that the council give its approval or consent to, recommendations on, or acceptance of an action, decision or other matter
- a power or duty established by an Act or regulation that council hear an appeal or reconsider an action, decision or other matter
- a power or duty to terminate the appointment of an officer
- the power to impose a remedial action under Division 12 of Part 3 (e.g. unsightly premises)

The delegation may be to

- a council member or council committee
- an officer or employee of the municipality
- another body established by council

with these exceptions:

- the power or duty to appoint or suspend an officer may only be delegated to the CAO
- council's powers, duties and functions cannot be delegated to a corporation

### **Delegation of Hearings and Other Proceedings (155)**

The delegation rules in subsection 155(2) do not apply to hearings where council is required by statute to hear an appeal or to reconsider an action, decision or other matter. They do apply to council hearings that are required by law or authorized by an enactment.

The rules also apply to council proceedings in which a person is entitled under the Charter to make representations to council.

The delegation to conduct hearings or proceedings

- may be general or specific in their application to a class of hearings or proceedings
- may be made by bylaw or resolution

- must be delegated only to one or more council members (municipal officers and employees and other persons are excluded)
- only the members delegated to hold the hearing or proceeding may be delegated to make the decision resulting from it
- if the decision making power is not delegated, council must not make the decision until the delegate reports to council on the views expressed at the hearing or proceeding
- council may revoke a delegation or change it in relation to a specific hearing or proceeding, i.e. council may delegate that hearing to another member

**Reconsideration (156)**

Council may establish, by bylaw, a right to have a delegate's decision reviewed by council. In that case, it must, by bylaw, establish procedures for reconsideration, including how a person may apply for it. The delegate must advise the person of this right.

## **Procedures for Council Meetings**

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### **Procedure Bylaw (124)**

Council must adopt a bylaw establishing the general procedures to be followed by council and committees in conducting their business.

There must be rules of procedure for both bodies, including how resolutions and bylaws are dealt with.

There must be provisions for minute taking and certification; advance public notice; identifying public posting places; designating an acting mayor (see s. 130); and the first regular council meeting date.

This bylaw cannot be amended, or repealed and substituted without prior public notice (see also s. 94) describing the proposed changes in general terms.

### **Council Meeting Days (124 & 125)**

The first meeting of the newly elected Council must take place on a day established in the procedure bylaw that must fall during the first 10 days of December after the triennial election.

### **Special Council Meetings**

As defined in s. 125(4), a special council meeting is not a regular or adjourned meeting. It may be called at the discretion of the mayor, or by 2 or more council members giving the mayor a written request.

If the mayor makes no arrangements within 24 hours for a meeting within the next 7 days, or if the mayor and acting mayor are absent or unable to act, the members may call the meeting themselves. In that case, either the members calling the meeting or the corporate officer must sign the notice of the meeting.

### **Notice of Council Meetings (127)**

A schedule of the time, date and place of regular council meetings must be made available to the public and notice of the availability of the schedule must be given once a year (see s. 94).

At least 24 hours notice of a special meeting must be posted at both the regular council meeting place and at the public notice posting places and left for each council member at his or her directed place. The notice must include the date, time and place of the meeting, describe in general terms the purpose of the meeting and be signed by the mayor or corporate officer. Notice of a special meeting may be waived by unanimous vote of all council members

### **Electronic Meetings (128)**

The procedure bylaw may authorize conducting a special council meeting by electronic or other communication facilities or the participation in that manner by a member of council or a council committee who is unable to attend. The members are deemed to be in actual attendance at the meeting.

The following rules apply:

- the meeting must be conducted in accordance with the bylaw
- the facilities must enable the participants to hear, or watch and hear, each other
- notice of the special council meeting must specify the way in which the meeting is to be conducted and the place where the public may attend to hear the part of the proceedings that are open to the public

- except for any part of the special meeting that is closed to the public, the facilities must enable the public to hear, or watch and hear, the meeting at the specified place and a designated municipal officer must be there
- the public must be able to hear, or watch and hear, the participation of a member at the open part of a meeting participated in by that member electronically or by other means

### **Quorum (129)**

The quorum is a majority of the number of council members provided for by law.

The acts of a quorum are valid even if some members are absent or council seats are vacant.

If the council no longer has a quorum of members, the minister may order that the remaining members constitute a quorum until the vacancies are filled by election, or may appoint qualified persons to fill the vacancies until persons are elected and take office.

If conflicts of interest reduce the number of members required for a quorum or to adopt a bylaw or resolution, the municipality may apply to the Supreme Court for an order. The court may order that all or specific council members may discuss and vote on the matter, despite declared conflicts of interest (s.100) or restrictions on participation (s.101) and may make the order subject to any conditions and directions.

### **Voting Rules (123)**

Questions are decided by majority vote of the members present at a meeting, unless otherwise provided by legislation.

Each council member has one vote on any question.

If a council member is present, the member must vote on the matter.

If the member does not indicate a vote the member is deemed to have voted for the matter.

A tie vote defeats the motion.

Where the statute dictates a specified majority of all the members of council is required (e.g. 2/3 or 3/4), it is based on the total membership of council, not merely those present for the vote.

Council's voting rules under section 123 apply to council committees.

### **Acting Mayor (130)**

The procedure bylaw must provide for the designation of an acting mayor in the absence or inability of the mayor to act or when the office is vacant. If both are absent from a council meeting, the members present must choose a member to preside. The acting mayor, when acting, has the same powers and duties as the mayor.

### **Mayor's Reconsideration (131)**

The mayor may require the council to reconsider and vote again on a matter that was the subject of a vote. This provision does not limit the authority of a council to reconsider a matter. Council must reconsider the matter as soon as convenient.

Council is given the same authority that it had on the original consideration of the matter and is also subject to the same conditions. In other words, if a public hearing process was required prior to the adoption of a bylaw, it will also be required prior to its reconsideration.

If the adoption of a bylaw or resolution is reconsidered and the adoption is then rejected, the bylaw or resolution is of no effect and is deemed to be repealed.

Other rules are:

- the mayor may only initiate a reconsideration under this section at the same council meeting as the vote took place or within 30 days following that meeting
- a matter may not be reconsidered if it has the approval of the electors or the assent of the electors and was subsequently adopted by the council or if there has already been a reconsideration of the matter

### **Presiding Member (132)**

The mayor or member presiding (the PM) must preserve order and decide points of order.

If the PM's decision is challenged, the question whether to sustain the decision must be put immediately and decided without debate. The PM cannot vote on the question and, if the votes are equal, the motion is affirmed.

If the PM refuses to put the question, council must appoint a temporary PM who must put the question immediately.

### **Expulsion (133)**

The presiding member may order a person expelled that the PM determines is acting improperly. This appears to include a council member, which was not the case under the legislation preceding the Charter. A peace officer may enforce this order as if it were an order of the court.

### **Authority to Compel Witnesses (134)**

This authority is limited to matters related to the administration of the municipality. We recommend that Council seek legal advice before embarking on this procedure.

### **Agenda**

The public business of the municipality is conducted at council meetings and may include

- hearing delegations
- receiving staff reports
- applications for matters which only council can deal with. e.g. bylaw amendments
- development permits (unless delegated to staff - the LGA, s. 920(12) indicates that the power to issue a development permit may be delegated)
- business license permits (unless delegated to staff)
- passing policy resolutions (e.g. risk management policies)
- adopting bylaws
- hiring statutory officers
- authorizing the prosecution and defence of lawsuits
- authorizing contracts (except those delegated to staff)
- authorizing certain expenditures

## **Public Participation (Part 4)**

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Some of these provisions are carryovers from the *Local Government Act* and before it, the *Municipal Act*. Others were introduced in the *Community Charter*.

### **Petitions (82)**

A petition is deemed presented to council when filed with the corporate officer (municipal clerk in some municipalities). The full name and residential address of the petitioner must be on the petition.

### **Community Opinion (83)**

Council is not limited to the formal voting process (referenda, plebiscite or “other voting”) but may gather community opinion on any question by other means, such as sending out questionnaires or conducting interviews itself or by a polling agency.

### **Open Meetings (89)**

As under the previous Acts, council meetings must be open to the public, except as permitted under section 90. Bylaws must be read and adopted in open session.

### **Closed Meetings (90)**

Part of a council meeting may be closed to the public (in camera), but the subject matter is limited to the lists in s. 90 [see the Appendix for the text of section 90]. The discretionary list is in s. 90(1) and the mandatory list is in s. 90(2).

The proceedings and minutes of in camera meetings may be withheld from public disclosure (but see the 15 year rule in s. 12(2)(a) of the *Freedom of Information and Protection of Privacy Act*).

Councillors must keep the process confidential (117)

### **Persons Attending (91)**

Staff members may be excluded from in camera meetings, but not Councillors. The minutes must disclose the names of all person present at a closed meeting.

### **Prior Requirements (92)**

Before holding a meeting or part of a meeting that is to be closed to the public, a council must state, by resolution passed in a public meeting,

- (a) the fact that the meeting or part is to be closed, and
- (b) the basis under the applicable subsection of section 90 on which the meeting or part is to be closed.

### **Other Bodies (93)**

The open and closed meeting rules apply to

- council committees
- municipal commissions (s. 143)
- parcel tax roll review panel
- board of variance
- advisory body established by council
- a body that under the Charter or any other Act may exercise the powers of a council
- a body prescribed by legislation

### **Annual Report (98)**

A council must, before June 30 each year, prepare an annual report, make it available for public inspection and have it available for the public meeting on the report mandated by s. 99.

### **Public Hearings (Part 26, Division 4, *Local Government Act*)**

Part 26 will be reviewed in a later phase of the development of the *Community Charter*. For now, the rules remain the same.

Factors to keep in mind are:

- do not confuse public hearings with council meetings
- council is required by statute to hold public hearings
- council listens to persons objecting to or in favour of zoning bylaws, official community plans, and amendments, as well as other types of applications
- council does not debate among its own members nor with members of the public; that is done later at a lawfully convened meeting of Council
- councillors may ask questions but not in the form of comment or debate
- councillors must keep an open mind, i.e. listen to all points of view and be willing to accept a persuasive presentation
- the statutory procedure must be strictly adhered to
- conflict of interest and bias must be avoided
- councillors must act in good faith

## Conflict of Interest and Ethics

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### Ethics Generally

Citizens are entitled to expect fair treatment and ethical behaviour from politicians. Councils that skate on the edge of principle or discard ethics for expediency set a bad example, to put it bluntly.

Citizens do not expect the council to ignore the reasonable requirements of other government legislation, such as the Workers Compensation rules, nor to ignore its own bylaws and regulations. Legal shortcuts may save time and money in the short run but over the long term will cost the municipality dearly.

Always remember that it is the taxpayer's money at stake. Councillors are the trustees of the municipality's assets and the beneficiaries of that trust are the taxpayers.

### Conflict of Interest

The *Community Charter*, in Part 4, Divisions 6 and 7, sets out the rules, requirements and penalties (e.g. disqualification, recovery of financial gain) for conflict of interest on the part of members of council. However, members of council may also be liable personally for voting for the use of money contrary to s. 191 of the Charter and may be disqualified from holding office for the periods of time prescribed in s. 110. There are also Criminal Code prohibitions on certain types of conduct as discussed below.

### Disclosure of Conflict (100)

This section applies to council and committee meetings and meetings of bodies listed in s.93 (in relation to closed meetings).

This section puts the responsibility on the individual member of council to be aware of actual or potential direct or indirect pecuniary conflicts of interest and to declare them in general terms. After making the declaration, the member must not do anything referred to in s. 101 (see below).

The exception is where the member has made the declaration and then has received legal advice on the issue of conflict of interest and the legal advice leads the member to believe there is no conflict.

“Pecuniary interest” is not defined in the Charter. It is understood to be a member’s financial interest in a matter that Council is dealing with. This interest can be direct or indirect - the member can receive the profit (or loss) directly or through one or more persons, corporations or other entities.

The conflict can be the council member’s personally or through some other person to whom the council member is connected - usually relatives living in the council member’s household, but other family members’ interests can also be attributed to the council member. The courts are the final arbiters of whether these interests are a conflict of interest for the council member.

### Restrictions on Participation (101)

Whether the member has made a declaration of conflict of interest under s. 100 or not, the member must not

- remain or attend at any part of a meeting referred to in section 100 (1) during which the matter is under consideration,
- participate in any discussion of the matter at such a meeting,
- vote on a question in respect of the matter at such a meeting, or

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

The penalty for breach of these rules is disqualification from office until the next general election.

### **Restrictions on Inside Influence (102)**

A council member must not use his or her office to attempt to influence in any way a decision, recommendation or other action to be made or taken

- at a meeting referred to in section 100 (1) [*disclosure of conflict*],
- by an officer or an employee of the municipality, or
- by a delegate under section 154 [*delegation of council authority*],

if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

The penalty for breach is disqualification from office until the next general election.

### **Restrictions on Outside Influence (103)**

In addition to the restriction on inside influence under section 102, a council member must not use his or her office to attempt to influence in any way a decision, recommendation or action to be made or taken by any other person or body, if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.

The penalty for breach is disqualification from office until the next general election.

### **Exceptions to Restrictions (104)**

Sections 100 to 103 do not apply in one or more of the following circumstances:

- the pecuniary interest of the council member is a pecuniary interest in common with electors of the municipality generally
- in the case of a matter that relates to a local service, the pecuniary interest of the council member is in common with other persons who are or would be liable for the local service tax
- the matter relates to remuneration, expenses or benefits payable to one or more council members in relation to their duties as council members
- the pecuniary interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in relation to the matter
- the pecuniary interest is of a nature prescribed by regulation

Despite sections 100 to 103, if a council member

- has a legal right to be heard in respect of a matter or to make representations to council, and
- is restricted by one or more of those sections from exercising that right in relation to the matter,

the council member may appoint another person as a representative to exercise the member's right on his or her behalf.

## Gifts

The following rules and restrictions in relation to gifts are set out as they appear in the Charter.

### Restrictions on Accepting Gifts (105)

- (1) A council member must not, directly or indirectly, accept a fee, gift or personal benefit that is connected with the member's performance of the duties of office.
- (2) Subsection (1) does not apply to
  - (a) a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office,
  - (b) compensation authorized by law, or
  - (c) a lawful contribution made to a member who is a candidate for election to a local government.
- (3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110(2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

### Guide for Accepting Gifts

The following guide may be useful in determining if a gift or personal benefit is acceptable by a member of council under section 105 of the Community Charter.

#### Ask yourself these questions:

1. Is this
  - (a) gift (tangible object) or
  - (b) personal benefit (meaning something that can be used or consumed only by an individual and not by the municipal corporation)received as an incident of the protocol or social obligations that normally accompany the responsibilities of a member of council?

A protocol or social obligation of office occurs when the member attends a function, event or ceremony in an official capacity as a representative of the Municipality. e.g. "sister" municipality exchanges, invitation to another government's event, such as a Provincial Minister's reception.
2. Is the gift or personal benefit connected to the performance of my duties as an individual member of council but not to the protocol or social obligations of a member of council?

In other words, it may be given in the expectation of receiving some favour or benefit in exchange, rather than as a protocol gift or benefit given and received on behalf of the Municipality.
3. If the context in which the gift or personal benefit is given cannot be considered an occasion of protocol or other social obligation of office, would it be given to me if I were not a member of council?

This is simply another way of framing question 2, and begs the question of what the giver expects as a consequence of the gift. Theatre tickets given by groups that receive grants from the Municipality are good examples.

### **The consequences of the answers to the questions:**

If the answer to question 1 is yes, the member may accept; if no, the member may not accept. This is the principal test of acceptance. If the gift is a tangible object, it should be turned over to the Municipality.

Questions 2 and 3 are included to illustrate what are **not** incidents of the protocol or social obligations of office. If the answer to 2 is yes or to 3 is no, the member cannot accept.

Point to remember: Organizations that receive grants from the Municipality should be required, as a condition of the grant, to directly acknowledge the Corporation of the Municipality, and not any of its officials, as the grantor.

Note that some organizations that receive municipal grants may be able to offer gifts and benefits that provide unique insight into their organization, which other organizations that compete for the same grant money are not able to offer, putting them at a disadvantage.

In all circumstances where you feel uncertain about accepting a gift or benefit, please seek advice from your lawyer.

### **Disclosure Of Gifts (106)**

- (1) This section applies if
  - (a) a member receives a gift or personal benefit referred to in section 105 (2) (a) that exceeds \$250 in value, or
  - (b) the total value of such gifts and benefits, received directly or indirectly from one source in any 12 month period, exceeds \$250.
- (2) In the circumstances described in subsection (1), the council member must file with the corporate officer, as soon as reasonably practicable, a disclosure statement indicating
  - (a) the nature of the gift or benefit,
  - (b) its source, including, if it is from a corporation, the full names and addresses of at least 2 individuals who are directors of the corporation,
  - (c) when it was received, and
  - (d) the circumstances under which it was given and accepted.
- (3) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

### **Disclosure Of Contracts (107)**

- (1) If a municipality enters into a contract in which
  - (a) a council member, or
  - (b) a person who was a council member at any time during the previous 6 months, has a direct or indirect pecuniary interest, this must be reported as soon as reasonably practicable at a council meeting that is open to the public.
- (2) In addition to the obligation under section 100 [*disclosure of conflict*], a council member or former council member must advise the corporate officer, as soon as reasonably practicable, of any contracts that must be reported under subsection (1) in relation to that person.

- (3) A person who contravenes subsection (2) is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

#### **Restrictions on Use of Insider Information (108)**

- (1) A council member or former council member must not use information or a record that
  - (a) was obtained in the performance of the member's office, and
  - (b) is not available to the general public,for the purpose of gaining or furthering a direct or indirect pecuniary interest of the council member or former council member.
- (2) A person who contravenes this section is disqualified from holding local government office for the period established by section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

#### **Financial Gain (109)**

- (1) If a council member or former council member has
  - (a) contravened this Division, and
  - (b) realized financial gain in relation to that contravention,the municipality or an elector may apply to the Supreme Court for an order under this section.
- (2) Within 7 days after the petition commencing an application under this section is filed, it must be served on
  - (a) the council member or former council member, and
  - (b) in the case of an application brought by an elector, the municipality.
- (3) On an application under this section, the Supreme Court may order the council member or former council member to pay to the municipality an amount equal to all or part of the person's financial gain as specified by the court.
- (4) In the case of an application made by an elector, if the court makes an order under subsection (3), the municipality must promptly pay the elector's costs within the meaning of the Rules of Court.
- (5) The court may order that costs to be paid under subsection (4) may be recovered by the municipality from any other person as directed by the court in the same manner as a judgment of the Supreme Court.
- (6) Except as provided in subsection (4), the costs of an application are in the discretion of the court.

#### **Disqualification (Part 4, Division 7)**

Under the Community Charter, the council cannot declare a member's seat vacant by resolution. Council must instead apply to the court for a declaration of disqualification. But first, council must pass a resolution authorizing the court application by a 2/3 vote of all its members. The council member who is the subject of the resolution may take part in the discussion and voting on it since sections 100 and 101 are not applicable to this resolution.

## Circumstances (110)

- (1) A person elected or appointed to office on a council is disqualified from holding that office if any of the following applies:
- (a) the person does not make the required oath or affirmation of office within the time established by section 120 (1) [*oath or affirmation of office*];
  - (b) the person is absent from council meetings for a period of 60 consecutive days or 4 consecutive regularly scheduled council meetings, whichever is the longer time period, unless the absence is because of illness or injury or is with the leave of the council;
  - (c) the person is disqualified under any of the following:
    - section 101 [restrictions on participation if in conflict];
    - section 102 [restrictions on inside influence];
    - section 103 [restrictions on outside influence];
    - section 105 [restrictions on accepting gifts];
    - section 106 [disclosure of gifts];
    - section 107 [disclosure of contracts];
    - section 108 [restrictions on use of insider information];
  - (d) the person is disqualified under section 191 [liabilities for use of money contrary to Act];
  - (e) the person is disqualified under section 66 (2) [who may hold elected office] of the Local Government Act or section 38 (2) [who may hold elected office] of the Vancouver Charter.
- (2) A person disqualified under subsection (1) is disqualified from holding office on a local government, including office on the council of the Municipality of Vancouver, as follows:

<b>Applicable provision</b>	<b>Period of disqualification</b>
(1) (a) [ <i>failure to take oath</i> ]	until the next general local election;
(1) (b) [ <i>unexcused absence</i> ]	until the next general local election;
(1) (c) [ <i>conflict</i> ]	until the next general local election;
(1) (d) [ <i>unauthorized use of money</i> ]	for 3 years from the date of the vote to which the disqualification relates;
(1) (e) [ <i>election disqualifications</i> ]	in accordance with Part 3 [ <i>Electors and Elections</i> ] of the <i>Local Government Act</i> .

## Court Application (111)

- (1) If it appears that a person is disqualified under section 110 and is continuing to act in office,
- (a) 10 or more electors of the municipality, or
  - (b) the municipality,
- may apply to the Supreme Court for an order under this section.

- (2) As a restriction, a municipality may only make an application under subsection (1) if this is approved by a resolution that
  - (a) is adopted by a vote of at least 2/3 of all council members, and
  - (b) identifies the grounds for disqualification under section 110 which the council considers apply.
- (3) Sections 100 [*disclosure of conflict*] and 101 [*restrictions on participation if in conflict*] do not apply to the council member who is subject to a resolution referred to in subsection (2) of this section in relation to that resolution.
- (4) An application under this section may only be made within 45 days after the alleged basis of the disqualification comes to the attention of
  - (a) any of the electors bringing the application, in the case of an application under subsection (1) (a), or
  - (b) any member of council other than the person alleged to be disqualified, in the case of an application under subsection (1) (b).
- (5) Within 7 days after the petition commencing an application under this section is filed, it must be served on
  - (a) the person whose right to hold office is being challenged, and
  - (b) in the case of an application under subsection (1) (a), the municipality.
- (6) On the hearing of the application, the court may declare
  - (a) that the person is qualified to hold office,
  - (b) that the person is disqualified from holding office, or
  - (c) that the person is disqualified from holding office and that the office is vacant.

#### **Status Pending Application (112)**

- (1) A person who is subject to an application under section 111 and who considers that he or she is qualified to hold office may continue to act in office pending the determination of the Supreme Court respecting the application.
- (2) If a person who is declared disqualified from holding office by the Supreme Court appeals the decision, the appeal does not operate as a stay of the declaration and the person is disqualified pending the final determination of the appeal.
- (3) If a declaration of disqualification referred to in subsection (2) is overturned on final appeal and the term of office for which the person was elected has not ended,
  - (a) the person is entitled to take office for the remainder of the term if otherwise qualified, and
  - (b) for this purpose, any other person elected or appointed to the office since the declaration of disqualification ceases to hold office at the time the person declared qualified takes office.

#### **Costs (113)**

- (1) In the case of an application under section 111 made by a group of electors, if the court declares that the person challenged is not qualified to hold office, the municipality must promptly pay the electors' costs within the meaning of the Rules of Court.

- (2) The court may order that costs to be paid under subsection (1) may be recovered by the municipality from the person who was declared disqualified or any other person as directed by the court in the same manner as a judgment of the Supreme Court.
- (3) Except as provided in subsection (1), the costs of an application are in the discretion of the court.

### **Consequences of Conflicts**

To sum up briefly, the consequences of a member of council debating and voting on a matter in which the member has a pecuniary conflict of interest are:

- the member can be disqualified from holding office
- the member's vote can be invalidated, which could change the result if the margin was one vote (a tie vote is negative)
- the resolution or bylaw voted on could be invalidated on the basis that the member's conflict tainted the entire vote
- the member can be required to give up to the municipality any financial gain realized by the member

All of these can result in expensive litigation for both member and municipality.

### **Common Law Bias**

This is non-statutory pecuniary conflict of interest. It is a conflict or bias that is not pecuniary but still affects the member, apart from the objective merits of the issue. However, it is not to be confused with political bias, i.e. left, right or centre politics. This can be a situation where a friend, business associate or family member or their interest can influence the member to vote in a certain way.

While a conflict of this sort will not disqualify a member from holding office, it can result in a challenge to the validity of the individual's vote or an action of the council, such as a bylaw, resolution or contract.

### **Criminal Code**

The Criminal Code deals with bribery, corruption and influence trading where public officials are concerned. The usual penalties for criminal behaviour apply - fines, imprisonment, disgrace. Please, do not go there - it is not worth it!

### **Other Forms of Bias**

Bias can occur in other forms, some obvious, some subtle. Bylaw enforcement is a good example.

While it is true to a certain extent that bylaws, by their very existence, can serve as a deterrent, there will always be some people who are violators, either deliberately or through ignorance of the law. Failure to enforce the bylaws against known violators soon becomes common knowledge in the community. This failure encourages disrespect for the bylaws and also for Council and staff. A scofflaw mentality sets in and subsequent enforcement efforts are met with outrage and cries of discrimination, e.g. why me and not them?

Consistency and fairness in bylaw enforcement are the keys to good administration of bylaws. There should be a bylaw enforcement policy in place. Any deviation from the policy should be examined for evidence of bias. The policy of most local governments, whether large, medium or small, is to investigate alleged infractions in response to complaints. Few, if any, can afford the resources to initiate investigations of every activity and property in the community.

The granting of privileges and permits can be affected by bias and great care should be taken to administer these areas fairly and evenly. Failure to do so only increases the level of cynicism towards government already abundantly apparent in our society.

Legally, Council has the power to change the zoning of any property, as long as Council complies with the statutory and other legal rules for procedural fairness, does not discriminate, acts in good faith (frankness and impartiality) and applies proper zoning purposes. Examples of proper zoning purposes include addressing the compatibility of land uses, traffic and parking congestion, noise and other nuisances, and the policies of the Official Community Plan (OCP). In addition, there must be predictability in zoning. If Council becomes known for changing zoning at whim, investment in the community will be discouraged.

### **Final Observations**

Aside from the statutory requirements, what traits should a councillor have to be effective?

Councillors have a job to do and it is a very important one. Local government is said to be the closest government to the people. Local government provides the most basic services: water, transportation, sewage and garbage collection, fire and police protection, recreation and planned communities. To do the job well, Councillors must be dedicated to the community and have a vision for its future.

In addition to having integrity and intelligence, a Councillor must be guided by these key features of good local governance (all equally important):

- placing the community's interests ahead of one's own
- pride in the reputation of the municipal corporation
- behaving ethically and fairly
- awareness of the legal limitations of local government
- placing importance on current and relevant policy making
- respect for municipal staff and the administrative role of staff
- being a good steward of the municipality's assets
- fair and effective bylaw administration and enforcement
- respect for the public
- abiding by provincial and federal laws affecting local government

Ideally, Council should not be both policy makers and administrators. When Councillors are involved in daily operations of the municipality, they tend to abandon their policy role. In the result, the municipality is rudderless and lacking in timely planning for the future. The Council cannot cope effectively with the crises that are bound to occur in the lifespan of any municipality.

### **Your Legacy**

Just remember this: you are elected to govern in the interests of the entire community, not to further your personal interests. Surely you want the community to remember you for what you contributed to it and not for what you took out of it.

**Lorena Staples QC**

## Appendix

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### Closed meetings

- 90** (1) A part of a council meeting may be closed to the public if the subject matter being considered relates to or is one or more of the following:
- (a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;
  - (b) personal information about an identifiable individual who is being considered for a municipal award or honour, or who has offered to provide a gift to the municipality on condition of anonymity;
  - (c) labour relations or other employee relations;
  - (d) the security of the property of the municipality;
  - (e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;
  - (f) law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;
  - (g) litigation or potential litigation affecting the municipality;
  - (h) an administrative tribunal hearing or potential administrative tribunal hearing affecting the municipality, other than a hearing to be conducted by the council or a delegate of council;
  - (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
  - (j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the *Freedom of Information and Protection of Privacy Act*;
  - (k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public;
  - (l) discussions with municipal officers and employees respecting municipal objectives, measures and progress reports for the purposes of preparing an annual report under section 98 [*annual municipal report*];
  - (m) a matter that, under another enactment, is such that the public may be excluded from the meeting;
  - (n) the consideration of whether a council meeting should be closed under a provision of this subsection or subsection (2);
  - (o) the consideration of whether the authority under section 91 [*other persons attending closed meetings*] should be exercised in relation to a council meeting.
- (2) A part of a council meeting must be closed to the public if the subject matter being considered relates to one or more of the following:

- (a) a request under the *Freedom of Information and Protection of Privacy Act*, if the council is designated as head of the local public body for the purposes of that Act in relation to the matter;
  - (b) the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party;
  - (c) a matter that is being investigated under the *Ombudsman Act* of which the municipality has been notified under section 14 [*ombudsman to notify authority*] of that Act;
  - (d) a matter that, under another enactment, is such that the public must be excluded from the meeting.
- (3) If the only subject matter being considered at a council meeting is one or more matters referred to in subsection (1) or (2), the applicable subsection applies to the entire meeting.