

Board Orientation

DON LIDSTONE, K.C.
DECEMBER 1, 2022

Overview

- Introduction to Board authority
- Relationship with other local governments and First Nations
- Personal liability for local government members
- Public hearing and show cause hearing
- Conflict of interest and gifts
- Respectful Workplace/Harassment/Bullying
- Confidentiality and Privacy
- Legal role of Board members versus roles of Chair and staff
- Financial Disclosures

BOARD AUTHORITY

Board Authority

- Municipalities not an order of government
- Constitution Act, 1867
 - Federal
 - Provincial
 - Creatures of provincial government
 - Saloons/taverns, asylums, penitentiaries

Board Authority (cont'd)

- Municipality creature of Province
 - Only powers delegated by Province by Act/Reg
 - *Community Charter, Local Government Act*, + over 100 statutes apply
 - *Community Charter*: expanded powers, amplified by Supreme Court of Canada

Board Authority (cont'd)

- Acts or Decisions – only bylaw or resolution
 - Valid act or decision – by Board or by person delegated by bylaw
 - bylaw or resolution
 - Resolution unless Act says bylaw
 - Bylaw or resolution only in “meeting”: regular, special, electronic

Board Authority (cont'd)

- Board only act in a “meeting”
 - Definition of meeting – Hamilton, Ottawa, Kingston, Yellowknife, and London cases
 - Issues
 - a) validity of bylaw, resolution
 - b) need notice, minutes, public access

Board Authority (cont'd)

- Bylaws/resolutions may be attacked
 - Validity – ground for attack
 - Constitutionality
 - Charter of Rights and Freedoms
 - Ultra vires
 - Bad faith

Board Authority (cont'd)

- ground for attack (cont'd)
 - Discrimination
 - Uncertainty
 - Fettering
 - Delegation
 - Statutory
 - Procedural fairness

Board Authority (cont'd)

- Board must comply with procedure
 - Bylaws
 - Remedial action
 - Zoning/OCP – public hearings/notice/consultation
 - Procedural fairness
 - Norman v Port Moody

Board Authority (cont'd)

- Real Property
- greatest power of municipality
- S. 8(1) Community Charter – natural person powers
- S. 26 disposition
- reservation, dedication, exchange
- expropriation
- highways
- lift

PERSONAL LIABILITY

Personal Liability

- Liability
 - Remove private law duties from bylaws
 - Policy resolutions versus operational
 - Transfer liabilities – agreement, bylaw
 - Insurance
 - Defence of due diligence/statutory authority

Personal Liability (cont'd)

- Personal liability
- S. 738 LGA – statutory exemption exceptions (gross negligence, malicious/wilful misconduct, dishonesty, defamation)
- S. 740 – indemnification
- S. 739 – defence for financial officer

Personal Liability (cont'd)

- Financial matters
 - Section 191 Community Charter
 - Powell River case
 - Personal liability and disqualification of elected officials
 - Financial officers – defence s. 739 LGA
 - Hinton case
 - Legal opinion – evidence of good faith

HEARINGS

Public Hearings

- Requirement to hold formal hearing
- Hearing held during Board meeting?
- Notice of hearing
- Disclosure of material to public
- Conduct of hearing

Public Hearings (cont'd)

- Conduct of hearing
- General rules
- Speakers' sign-in
- Speaking order
- Emailed or advance sign-in
- Speaker time limit
- Speaker submission limit
- Speaker list

Public Hearings (cont'd)

- Control of speakers' time
- Repetition of submissions
- Duration of hearing
- Continuation of hearing
- Submissions at Board Q & A
- Hearing Rules

Public Hearings (cont'd)

- Information package
- Correspondence - what is included?
- Written submissions
- Counting submissions
- FOI documents
- Separate bylaws

Procedural Fairness Hearings

- Doctrine of fairness
- When applicable
- Rules of fairness
- Legitimate expectations

CONFLICT OF INTEREST

Conflict of Interest

- Disqualification from voting
 - Case law
- Disqualification from office
 - *Community Charter*
 - Direct or indirect pecuniary interest
 - Outside influence
 - Inside influence
 - Contracts
 - Inside information
 - Exceptions

Conflict of Interest – Continued

- Pecuniary interest
 - Property interest – Hawrelak
 - Competitor – Westend Services
 - Client – McCaghren
 - Contractor – Sacks
 - Developer – Casson
 - Business owner - Wannamaker

Conflict of Interest - Continued

- Resident/owner adjacent to works – Jackson
- Amount not an issue - \$19.66 – Letherby
- Ignoring solicitor opinion – Blake
- Campaign contribution – King
- Family members - Greene
- Lobbying or influencing Board
- Participation on other societies or entities

Conflict of Interest - Continued

- Disqualification from voting
 - Bias/reasonable apprehension of bias
 - Richmond; St. Boniface
 - Personal interest – client, family, patient, contractor, close friend and political agent.
 - L'Abbee case
- s. 122 Criminal Code – fraud/breach of trust

Gifts

- Receipt of gifts prohibited
 - Disqualification from office
- Exception
 - protocol/social obligations
 - limit
 - disclosure

RESPECTFUL WORKPLACE

Harassment

- Bullying and Harassment complaints are on the rise
- Most difficult complaints involve allegations of “toxic workplace”
- Review and update your policies
- Ensure you have detailed procedures to follow if complaint received
- External investigations are becoming the norm

Harassment (Continued)

- WorkSafe BC policies in place
- Apply to elected officials (as claimants or accused)
- If municipality is aware of breach or receives complaint, must follow policy
- Investigation stage enables other elected officials and Staff to remain neutral

Harassment (Continued)

- Bullying and harassment policy: must follow policy procedure, including investigation if policy requires
- Other issues:
- Select committee + s. 134 (examination of witnesses under oath and subpoena of records)
- Independent investigator
- Liaison with police and prosecutor (re: WorkSafe BC Burns Lake Mill Disaster Inquiry)

Breach of Confidentiality

- *S. 117 Community Charter*
- Former members
 - Records held in confidence
 - Information considered in camera
 - Until Board releases to public
- Skakun
 - Clear breach of section

Breach of Confidentiality (continued)

- Exceptions: FIPPA or litigation
 - Exceptions do not apply to elected officials
- Harassment policy: leak of a complaint or process = independent violation
- Breach of FIPPA

Board Remedies: Code of Conduct

- Council or board decision: procedural fairness
- Hearing opportunity
- Notice of hearing
- Time to prepare
- Provision of records to be considered
- Consequences
- Legal representation
- Reasons

Board Remedies (continued)

- Prosecution
 - Section 30.4 FIPPA – one year limit
 - S.117 CC/s. 5 Offence Act – six months
- Privacy Act
 - Section 1 – tort to violate privacy of “person” (includes a LG)
 - Limitation period – two years

Improper Conduct

- *S. 133 Community Charter*
- Expulsion from meetings
- Chair: removal order if conduct threatening or interferes with meeting conduct
- Police response: peace officer may enforce as a court order
 - therefore need agreement with police or court order

Improper Conduct (continued)

- High threshold for injunction
 - Charter Rights protected (freedom of expression in a political context)
 - Port Coquitlam v. Osberg
- Elected official expulsion rare

ROLES OF STATUTORY PARTIES

Roles of Statutory Parties

- The Roles of the Chair, Directors, Staff are Statutory
 - Chair - CEO
 - Oversees implementation of law
 - Communicates information to Board
 - Recommends measures

Roles (continued)

- Chair - Continued
 - Directs staff
 - Suspend staff, subject to Board
 - Reconsideration
 - Order
 - Expulsion
 - Standing committees

Roles (Continued)

- Board Members
 - Collective not individual power
 - Special meeting
 - Consider well-being of LG
 - Contribute to measures
 - Participate in meetings
 - Carry out assigned duties

Roles (Continued)

- Staff - statutory
 - CAO
 - Corporate officer
 - Financial officer
 - Policy vs. administration
 - Approving officer
 - Termination Protection