LIDSTONE & COMPANY

the Law Letter

In this issue

Court Catalyzes Municipal Powers A review of the recent BC Court of Appeal decision on property tax rates p. 1	Medical Weed Control How municipalities can use new federal laws to assist in regulating businesses p. 4	Always Look a Gift Horse in the Mouth A crash course - when it is not okay for local government officials to accept gifts p. 6	Best Practices and Tips from our litigation department on how to avoid our litigation department p. 8	Short Snappers A quick roundup of recent court decisions of interest to local government p. 9	Lobby Laws Update on recent amendments of interest to local government p. 11

Court Catalyzes Municipal Powers

In a judgment that again affirms the role of municipalities as independent decision makers, the British Columbia Court of Appeal released its unanimous decision in Catalyst Paper Corporation v. North Cowichan (District), 2010 BCCA 199, on April 22, 2010. The District is one of several municipalities whose property tax rates have been challenged recently by forest industry companies. All the municipalities were successful in upholding their tax bylaws at trial in autumn 2009 but only the action against the District by Catalyst Paper Corporation (Catalyst) has since been considered by the Court of Appeal.

The Court of Appeal confirmed the findings of the Supreme Court in upholding the District's tax rate bylaw (the "Bylaw"), which was challenged by Catalyst as unreasonable, ultra vires, and therefore illegal.

For several years, Catalyst lobbied the District and the provincial government for a reduction in its property taxes. Despite these efforts, and despite a slight reduction in tax ratio, the District's 2009 Bylaw essentially continued the tax rate ratio

Catalyst (continued from Page 1)

between residential (class 1) and major industry (class 4) classes.

Catalyst appealed to the Court of Appeal on the grounds that the trial judge erred in applying the 'reasonableness standard' to the Bylaw and in interpreting the scope of the District's taxing authority and policies to be taken into account by the District in exercising that authority. The Court of Appeal made a number of key findings, affirming previous cases, and attempting to make the new Dunsmuir standard of review more clear for local government.

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Discretion for municipal political decisions

The key sections of the Community Charter that give a municipality the authority to tax property are 165 and 197. Section 165 requires a municipality to establish and adopt, by bylaw, a financial plan before adopting its annual tax bylaw. Section 197 states that after adoption of the financial plan but before May 15, a council must by bylaw set property taxes for the year by establishing rates. Section 197 confers discretion on a council in terms of the factors it can consider in fixing property tax rates: these are fact-driven, policy-laden and discretionary and therefore the range of possible reasonable outcomes is broad.

The Court of Appeal confirmed that, unlike regional districts that still have a regulated maximum ratio between classes, a municipality has virtually unfettered discretion to consider whatever information it deems relevant and to allocate the tax burden among the classes as it sees fit. When making political or legislative decisions based on what elected officials deem to be in the best interests of their citizens, municipal councils are exercising "a central principle of democratic government" and should be given the highest degree of deference by courts of law.

Justice Newbury stated that the District was under no obligation to use empirical formulas when setting tax rates. Rather, the considerations that go into adopting a financial plan and a taxing bylaw are to include knowledge of the community, the community needs, the economic challenges of the community, the adequacy of the services provided and myriad other considerations, which the District properly weighed in this situation.

Review of municipal bylaws – what is 'reasonableness'? Local government bylaws are subject to judicial review in order to "ensure the legality, reasonableness and fairness of the administrative process and its outcomes" as was stated by the Supreme Court of Canada in Dunsmuir

Catalyst (continued from page 2)

v. New Brunswick. The effect of Dunsmuir has been to collapse the former standard of patent unreasonableness (see for example Rascal Trucking) to create one 'reasonableness' standard of review.

Reasonableness is a deferential standard that is based on the idea that some questions that come before decision makers such as municipal councils do not lend themselves to one answer – they have a number of possible, reasonable conclusions that may be best determined by those decision makers closest to the people and places affected.

Reasonableness is concerned with:

> (a) "the existence of justification, transparency and intelligibility within the decision making process," and
>
> (b) "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (Dunsmuir para.47, quoted in Catalyst v. North Cowichan).

The Court of Appeal agreed with Catalyst that a truly unreasonable bylaw cannot be made valid by the existence of an explanation.

The Court of Appeal did not agree, however, that in order to be reasonable, a decision of a local government must be founded on a set of objective criteria or even a "rational" policy. Justice Newbury rejected Catalyst's attempt to combine rational with empirical and their argument that the District had not set an objective standard or rational set of criteria in fixing the tax rates: "I do not agree ... that in order to be reasonable, a decision of a municipal council must be founded on a particular set of objective criteria or even a demonstrably 'rational' policy." Unless the outcome is something "overwhelming" or a decision that "no reasonable body could come to", a court will not intervene and substitute its 'reasonableness' for that of a democratically elected council. This held true in the circumstances of the District, where just because its tax ratio, when compared to other municipalities, was on the far end of the spectrum did not mean that the Bylaw was outside of the range of possible and acceptable outcomes.

Giving reasons vs. creating an evidentiary record The Court of Appeal's decision made it clear that a local government is not required to give reasons for adopting a bylaw unless the enabling statute or the specific circumstances specifically requires reasons. Where the statute requires reasons, or where a duty of procedural fairness is engaged because the decision affects a person's rights and interests, reasons will be required (as in Lafontaine). Where a bylaw is the result of an exercise of legislative power, there is no obligation to provide reasons in the formal sense.

Still, because such a bylaw is not immune from review, in order for a court to determine that such a legislative decision was made reasonably, there must be sufficient evidence in the record for a reviewing court to base such a conclusion on. This may include a detailed Staff Report to the local government, any internal or external studies or reports that were relied on by the local government or by staff for direct or indirect support. For example, if a local government is making a decision on whether or how to regulate smoking in public spaces, any medical report, including for instance those published by the World Health Organization, should be included in the agenda package so it is evident the local government had before it all the relevant factors and evidence when making its reasonable decision.

Looking for solutions Not content with the Court of Appeal's decision, heavy industry is still seeking solutions. Among those solutions: seeking leave to appeal to the Supreme Court of Canada. Whether

the country's highest court will allow an appeal, and on what grounds, remains to be seen. In the meantime, solutions for heavy industrial taxpayers will likely have to come through the political, as opposed to the judicial, process. As Justice Newbury stated at the end of the Court of Appeal decision:

> If it is important to the District to retain Catalyst as an employer and a taxpayer, the "collective perception of self-interest" of municipal (or provincial) officials will lead to a recognition that significant accommodation is necessary.

Indeed, Powell River and Catalyst have recently agreed that, in return for Catalyst dropping its lawsuit, the City will work toward reducing the class 4 tax rate and Catalyst will assist the City in finding ways to reduce its capital expenditures for future municipal service infrastructure.

It is hoped that this will allow the City to maintain a much needed tax base while retaining Catalyst's mill as a key small town employer. At the provincial level, the joint committee on municipal property tax reform, announced in the February 2010 Throne Speech, continues its work and is expected to table its recommendations in autumn 2010, likely around the same time we will hear from the Supreme Court of Canada on whether it will hear Catalyst's appeal. Rachel Forbes

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Medical Weed Control

The federal Marijuana Medical Access Regulations allow individuals who meet prescribed criteria to possess and produce marijuana for medical purposes. Medical grow-operations are lawful, but they are too often "assigned" to unauthorized persons, and they can pose the same risks as illegal grow-ops, including home fires, electrocution, unsafe structural alterations, and health risks such as mould. Enter the Community Charter. First, the bad news: although section 64(l) of the Charter allows a council to exercise its authority in relation to "weeds or other growths", the Charter does not have grow-operations in mind (yes, we've been asked). The good news is that the Charter is broad enough in scope to give local governments the authority to regulate those aspects of medical grow-operations that impact health and safety.

Marijuana is subject to near absolute criminal prohibition on possession, sale, and production under the Controlled Drugs and Substances Act (CDSA). The Regulations allow individuals with medical need to apply for an authorization to possess and produce marijuana and provide for personal-use or designated-person production licences. A personal-use production licence allows production for one's own medical purposes. A designated-person licence only allows production for a licensed person with a medical need. Both licences control the number of plants that may be produced and the amount that may be kept on site. Designated-person licence holders can hold a maximum of two licences to produce, and neither licence holder can produce marijuana in common with more than two other licence holders.

The Regulations empower an inspector to enter property to verify that production is in accordance with the terms of a licence. If individuals stay within the terms of their licences, the criminal prohibitions against cultivation, trafficking and possession do not apply.

The power to make laws in relation to the criminal law is an exclusive federal power. The dominant feature of the CDSA is criminal law, as it reflects a clear intention to control the production, import and use of potentially dangerous drugs and other substances. The Regulations are thus a valid exercise of the federal power. The question arises how a local government can also become involved with medical grow operations without intruding on the federal power. The short answer is that the mere existence of federal regulation in one area

Medical Weed Control (continued from page 4)

does not mean local governments cannot also take action. If a local government has the authority to take action in a particular area, that power will not be invalidated simply because there is some overlap with federal law. Federal legislation is only paramount to a bylaw when there is a direct conflict between the two. As long as local governments are acting pursuant to their own powers and it is possible to comply with local bylaws and the federal laws, bylaws will be valid.

What exactly are the local government powers? In regard to medical marijuana, section 8 of the Community Charter gives municipalities broad powers to regulate in relation to the health, safety or protection of persons or property: 8(3)(g), the protection and enhancement of the well-being of its community in relation to nuisances, disturbances and other objectionable situations: 8(3)(h), and buildings and other structures: 8(3)(l). A municipality may enact a bylaw regulating medical marijuana production under one of these sections. The bylaw could set out regulations, prohibitions and requirements in relation to electricity use and electrical safety, fire safety, prevention of mould, fungus or other unsanitary conditions, and the remediation of health or safety issues identified at the production site.

A bylaw regulating medical marijuana production would have as its dominant purpose health and safety, which is a valid municipal purpose. There are limits to what a council may do. For example, it is unlikely a council may set its own limits on the amount of marijuana that can be produced by licensees. That is an area exclusively within the jurisdiction of the federal government.

In addition to regulating aspects of medical marijuana production, a council may impose a requirement that licensed marijuana producers register with the city. The definition of "regulate" in the Community Charter is broad and includes the right to establish rules. As well, a council's bylaw power in section 8 is broad and includes the right to "impose requirements". One such requirement or rule in the bylaw could be that individuals licenced to produce marijuana under the Regulations must register with the city.

There are limits on the ability of a local government to collect personal information from others. In Royal City Jewellers & Loans Ltd. v. New Westminster (City), 2007 BCCA 398, for example, the Court of Appeal quashed a bylaw that required second hand dealers to collect personal information from all persons from whom a second hand article was bought or received and to disclose that information to the police. In that case, however, the general power to regulate business was limited by the specific powers regarding the extent of the notification or data collection power. In the context of registering medical marijuana grow-operations, nothing in the Community Charter would further restrict the broad bylaw powers in sections 8(3)(g), (h) or (l).

In addition, the personal information being collected in Royal City Jewellers was provided to police, which provided police with an unrestrained opportunity to monitor clients of second-hand dealers. In the circumstances we are contemplating, the personal information would be registered with the municipality and would not be disclosed to the police. If a local government required licenced producers to register, the Freedom of Information and Protection of Privacy Act ("FIPPA") would apply.

Regulation of medical marijuana production could also include inspection. Section 16 of the Community Charter grants authority to local governments to enter on private property to determine whether all regulations, prohibitions and requirements are being met in relation to any matter for which a council has exercised authority under the Community Charter. Section 66(1)(a) of the Charter also allows council to authorize the

Medical Weed Control (continued from page 5)

municipal fire chief to enter on property and inspect premises for fire-related hazards.

The inspection powers extend to the power exercised by a municipality under another Act to regulate, prohibit and impose requirements. For example, if a municipality enters into an agreement with the provincial Minister, it is possible for it to administer provisions of the Safety Standards Act and adopt bylaws concerning a standard that is or could be dealt with under that Act. Surrey has taken the lead in conducting electrical hazard inspections under the Safety Standards Act and these inspections have been upheld as valid.

In Arkinstall v. City of Surrey, the BC Supreme Court upheld the right of Surrey's team to conduct electrical safety inspections of residences targeted for high electricity usage, as long as there were reasonable grounds to inspect and notice was given to the occupant of the property. The court held, however, that police accompaniment of the safety team on the inspection was contrary to section 8 of the Charter of Rights and Freedoms, the right to be free from unreasonable search and seizure. The police had been using information found during the searches for police purposes, which was not authorized without a warrant.

The Arkinstall case (under appeal) shows how far-reaching the inspection powers of municipalities are. If a municipality enacts a bylaw to regulate medical marijuana production, it could inspect licensed grow operations in relation to health and safety, protection of property, inspection of nuisances, or inspection of remedial work ordered. Inspection could not be carried out to ensure that marijuana production is for medical use. Such an inspection involves a criminal objective and would not be a valid municipal inspection purpose, particularly if the inspection could result in seizure of marijuana or reporting to the police.
Marisa Cruickshank

Always look a Gift Horse in the Mouth

When may an elected municipal official accept a gift? This issue has been of concern among officials and the general public for some time but came into the spotlight when the world arrived in Vancouver for the Olympian party of 2010. Stories of elected officials being offered tickets or other items made the news several times in the days leading up to the Olympics. The key questions are: What is a gift? When is it okay to accept a gift? What rules need to be followed if a gift is accepted?

The Rule Section 105 of the Community Charter prohibits an elected local government member from accepting a gift, fee or personal benefit directly or indirectly that is connected in some way to his or her performance as an elected official. Therefore, barring any of the three exceptions, the simple rule is that the receipt of gifts by municipal officials is not permitted. Failure to comply with this requirement may result in the disqualification of the member until the next general local election, unless the breach was done inadvertently or because of an error of judgment made in good faith.

The Exceptions As mentioned, the Charter sets out exceptions to the strict rule. Namely, a gift or benefit may be accepted if it is received as:

- an incident of the protocol or social obligations that normally accompany the responsibilities of office;
- compensation authorized by law; or
- a lawful campaign contribution.

These are the only exceptions. All other gifts and benefits may not be accepted.

What is a gift? While the rule surrounding the receipt of gifts and benefits appears to be straightforward, questions arise when situations are not as clear cut as the traditional giving and receiving of a tangible good. Gifts are not always tangible; they may also come in the form of a personal benefit. In other words a gift does not necessarily have to be tangible, say Olympic hockey tickets, to be considered a gift. The term 'personal benefit' was included in the Charter to cover situations where an elected individual would be able to use or consume something, the benefit of which would not flow to the municipal corporation as a whole.

When is it okay to accept a gift? While the strict rule is that elected officials are prohibited from accepting gifts, several small exceptions to the strict rule exist. Generally the exception that raises the most questions is the one surrounding gifts received as an incident to protocol or social obligation. Members are often placed in situations where they will be given certain tokens, a t-shirt from a charity run for example. These gifts, for the most part, do not fall under the strict prohibition. In order to determine whether the gift of benefit falls within the exception three questions may be useful to consider.

First, is the gift or personal benefit 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. An example of such a benefit might be an invitation to a dinner or function by another branch of government such as a Provincial Minister's reception.

If the answer to this question is yes, the member may accept the gift (subject to some additional disclosure conditions). If no, the member may not accept the gift. This is the principled test of acceptance. An additional consideration is that, if the gift is a tangible object and if practical, it is safest to turn it over to the Municipality.

The second question to consider is whether the gift or personal benefit is connected with the performance of the member's duties as a member of council but not to the protocol or social obligations of a member in council. In other words, a gift or personal benefit may be bestowed 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.

Finally, the context of the gift or personal benefit must be considered. If the context in which the gift or benefit is offered cannot be considered an occasion of protocol or other social obligation of office the question is whether this gift or personal benefit would be available if the receiver was not a member of council.

If the answer to the second question is yes or to the third is no, the member cannot accept the gift.

What rules need to be followed if a gift is accepted? In the event the gift does fall within one of the three permitted exceptions, the member need also be aware of disclosure requirements set out in the Charter. Section 106 applies if a member receives a gift or personal benefit (as described above) that exceeds $250 in value. The disclosure requirements also apply if the member receives directly or indirectly multiple gifts or benefits from the same source if the total value exceeds $250 in any 12 month period. As soon as reasonably practicable the member must file with the corporate officer a disclosure statement indicating the nature of the gift, detailed information about the source, when it was received and the circumstances under which it was accepted.

Too often, members believe they may accept a gift if they disclose under section 106, but the rule is that all gifts must be refused unless they fall under one of the three statutory exceptions, in which case the disclosure requirement applies.
Jessica McKeachie

Lessons Learned: Best Practices and Pitfalls to Avoid

Occasionally the lawyers at Lidstone & Company notice things that result in higher or otherwise unnecessary local government legal costs. With a view to the theme of local government proactive prevention of legal problems (versus the notion of trying to react to legal crises), this regular column in the newsletter will identify recurring troublesome trends.

Prepare and Use Checklists In the case of hearings, notices, AAPs, OCP adoption, and many other applications, it is advisable to prepare and adhere to a comprehensive checklist. These work for airline pilots every time they take off, and are equally useful for local government officials. A completed checklist also provides useful evidence years later when the individuals involved have retired and are far removed from the time and place of the disputed process or transaction.

Use Valid Precedents A dangerous trend in BC is the cutting and pasting of old bylaws, notices, agreements or covenants that unfortunately are not up to date with applicable legislation or case law. For example, we have seen copied revitalization bylaws and notices that were from a bygone era. Make sure the pro forma is consistent with contemporary legislation. That being said, there are times when a good precedent will save time and money, as in the case of a Chair's hearing statement, a hearing notice, a phased development agreement, etc., if it has been vetted by a lawyer and if it is kept up to date.

Proofread Always proofread your documents. Numerous problems can be avoided with careful proofreading. An ambiguous or incomplete provision can be interpreted against a local government, and in the other party's favour, if it is improperly drafted. Remember to define terms you use, and use them consistently. Ensure references to other documents or legislation are current, and specify that bylaw and legislation references are "as amended from time to time".

Keep up to Date on Legislative Requirements It is a good idea to make a habit of regularly checking legislative requirements before taking even routine steps, like publishing a newspaper notice (such as notice of disposition, assistance, partnering, etc.). The legislation and case law are constantly changing and it is important to be current on what is required for compliance, or you risk, for example, your bylaw being quashed because the required process was not followed.

Get it in Writing When negotiating agreements, it is wise to put every component in writing. Even if you think all parties are on the same page, or a particular issue is non contentious or just plain common sense, by putting it in writing now, you are forced to turn your mind to where you stand, and you have a record of exactly who agreed to what.

Sign the Agreement and Keep Copies Once you have negotiated the terms of your agreement, be sure to follow the statutory procedure (such as passing a resolution or delegating by bylaw the agreement-making function), and ensuring all parties sign it. An unsigned agreement such as an electronic draft may be completely worthless if the other party argues it does not reflect what was agreed to. Keep copies in accordance with your local government's record-keeping protocol. A signed copy of the agreement is often the most important and best evidence you will have when a dispute arises later on. Never rely on the other party to keep copies of critical documents.

Lessons Learned (continued from page 8)

Get Security When entering agreements, it is a good idea, where authorized by statute, to secure the other party's compliance with something other than their signature. Enforcing an agreement in court is costly and time consuming, and there is no guarantee of success. Even if successful in principle, victory is hollow if the other side does not have the means to satisfy the judgment. If you have built security, enforcement and collection mechanisms into your agreement, you will be able to ensure compliance and will control the enforcement process. For instance, take a letter of credit and only release it once the other party has performed their obligations, if it is unnecessary to invoke the "act in default" provisions. Sara Dubinsky

Short Snappers

Sierra Club of Canada v. Comox Valley (Regional District), 2010 BCSC 74
Within the same board meeting, the Regional District issued a development permit to operate a gas station, and adopted a bylaw that barred gas stations as a use on the site for which the development permit had just been issued. The Court held that this was not an inappropriate action:

> …the actions of the Board in dealing with this application are consistent with the overall purposes of the Local Government Act …, such as providing local government with flexibility 'to respond to fostering the current and future economic, social and environmental well-being of its community." …Courts in the recent past have accepted these as appropriate principles and have given deference to local government decision making.

In establishing a legal non-conforming use, the Court found that the actual use of the land is not a prerequisite. Rather, an owner could show a genuine commitment to that land use by other means, including carrying out studies and reports, and retaining professionals to work on the project, even if such actions did not alter the land itself.

The 1991 decision of Linton v. Comox-Strathcona (Regional District) was the previous standard, where a non conforming use that had not yet commenced needed to be established by actual use of or alteration to the land. The Court of Appeal, however, has previously noted in Sunshine Coast (Regional District) v. Bailey (1996), that commitment to use is not restricted to actual use but that it must go beyond the mere planning stages.

In this case, the BC Supreme Court found that even though there was no actual alteration of the land, the respondent demonstrated a commitment to the building of a gas station through site studies, the commissioning of reports and the hiring of professionals. This commitment was shown from the date of initial application to the date of the hearing and that as a result the project moved from the planning stage or a mere concept, to an "unequivocal commitment" to use the land as a gas station.

Stevens v. Capital Regional District, 2010 BCSC 445
This case was a "small battle in an ongoing war over land use on Galiano Island." On one side were residents of Galiano Island who were adamantly against any further development, while on the other hand a portion of the Island's population supported the continuation of controlled logging on the Island and viewed the construction of a residence on managed forest lands to be reasonable.

The issue before the court became one of statutory interpretation and paramountcy. Given that the Private Managed Forest Land Act, S.B.C. 2003 c. 80 came into force in August 2004, and only spoke of prohibiting future action by a local government

effecting directly or indirectly a forest management activity, the Islands Trust's previous bylaw was not affected and was therefore a proper basis upon which to refuse the issuance of a building permit.

Had the building permit application been made and accepted before sections 13-16 of the Forest Land Reserve Act, R.S.B.C. 1996 c. 1158 had been repealed, it would have been permitted under section 13 to build a residence because that legislation would have overridden the bylaw under the doctrine of paramountcy. Since November 1, 2002 the provincial legislation states only that local government cannot legislate about ancillary uses. The Island Trust zoning bylaw was pre-existing and therefore prevails, and thus in Galiano Island's F-1 zone, no additional dwelling unit are permitted.

Prince George (City) v. Columbus Hotel Company (1991) Ltd., 2010 BCSC 149
In this case, the City had come to possess the hotel as a result of a tax sale but Columbus continued to occupy it. Until the City registered a transfer of the lands pursuant to a tax sale under the Local Government Act, Columbus was shown on title as the owner of the property. During the redemption period, a fire destroyed the building. Following the fire, the City, acting pursuant to Division 12 of the Community Charter, required Columbus to demolish the building, remove debris and fill any remaining excavation. When the defendant did not comply the City took action pursuant to section 17 of the Charter at Columbus's expense.

The City took legal action to recover the costs of demolition and debris removal. The Court held that the City could not recover remedial expenses from an occupier of property owned by the City unless the occupier caused or contributed to the condition requiring remediation, which had yet to be determined. The Court stated that:

> The owner clearly has an interest in the property that should be insured. The occupier should insure its limited interest in the property … and insure against liability for property damage for which it may be liable. There is nothing inequitable in restricting the liability of mere occupiers to liability arising out of the occupiers' own acts or omissions….

Prince George (City) v. Riemer, 2010 BCSC 118
Mr. Riemer, a resident of the City, had accumulated a large number of items including construction and building materials and rubbish in and around his house, shed, and yard and had erected additional temporary structures to store an even greater number of items. The City sought an order from the Court against Mr. Riemer on the grounds that the condition of his property was contrary to the City's Zoning Bylaw and Maintenance Bylaw. The Court granted the order declaring that Mr. Riemer had one month to move the excessive items into his house and to remove the 'rubbish'.

That being said, despite Mr. Reimer's antagonism towards the City's Bylaw Enforcement Officers, and the accumulation of "rubbish" in the carport, the Court did not look favourably on the Enforcement Officers seizing a large quantity of items from Mr. Reimer's carport without such power being granted in either a bylaw, or by a Court order. The court stated that it was "no excuse for a municipal government or its employees to act wrongly against a person no matter how annoying he may be to them".

The Court was troubled by the City's assertion that while it did not have any legal basis for the steps taken to remove the items from Mr. Reimer's home, the defendant's evidence at trial 'retroactively' proved the legality of those steps. If such an argument succeeded, it would mean that a municipality could take action against one of its residents without any legal justification, and then assert that the action was later proven to be justified. The judge refused to accept that such ex post facto justification could be countenanced and

ordered the City to pay $1,000.00 to Mr. Riemer as compensation for wrongful seizure.
Jessica McKeachie.

Lobbyist Registration for Local Government Affiliates

Recent amendments to the Lobbyists Registration Act came into effect on April 1, 2010. Some of the amendments affect "in-house lobbyists" and provide for special reporting requirements for such lobbyists. Local governments themselves and bodies representing local governments (such as UBCM or LGMABC) are exempt under the Act, but routine communications between an official of a local government owned or controlled corporation or a society ("organization") and the Province could engage the lobbyist registration regime. A failure to register and otherwise comply with the legislation could result in a hearing and administrative penalty, public disclosure of non-compliance reports, a fine, public censure or local government embarrassment.

Local governments should therefore ensure they understand the requirements of the legislation and regulation. The amendments broaden the definition of "lobbyist". An "in-house lobbyist" is an employee, officer or director of an organization, including a local government owned or controlled corporation or society, who receives payment for the performance of his or her functions and whose lobbying either alone or with other individuals adds up to at least 100 hours annually or otherwise meets criteria established by regulation.

Section 1.2 of the regulation provides that all time spent on activities, including preparation, directly related to and necessary for carrying out lobbying are included within the determination of the time spent lobbying.

Lobbying means communicating with a provincial public office holder in an attempt to influence legislation, regulations, programs, contracts or grants, transfers of assets, public-private partnerships, or other similar matters. In the case of an in-house lobbyist, it also includes arranging a meeting between a provincial public office holder and any individual in relation to any of these matters.

"Local governments themselves and bodies representing local governments (such as UBCM or LGMABC) are exempt under the Act."

For the purposes of the Act, a public office holder includes an MLA, an officer or employee of the Province, a person appointed to an office or body by Cabinet or a Minister, or an officer, employee or director of a crown corporation.

For the purposes of the Act, the senior officer of the organization is the most senior person compensated for their duties. This is the "designated filer" responsible for registering in-house lobbyists.

In regard to calculating the "100 hours" of lobbying or preparing for lobbying, the Province has issued a bulletin entitled "100 Hours".

Lidstone & Company

Paul Hildebrand is Associate Counsel at Lidstone & Company. Mr. Hildebrand is the head of the law firm's Litigation Department. He won the Gold Medal in law at the University of British Columbia in 1980. For nearly 29 years, Paul Hildebrand has practiced law in the area of complex litigation. Mr. Hildebrand is responsible for the conduct of our local government clients' litigation matters, including defense of claims, insurance matters, suing other parties, injunctions, appeals, enforcement, and other litigation related matters. He also has expertise in regard to arbitration, mediation and conciliation. He has done securities work, including financings for public and private companies.

Sara Dubinsky is a graduate of the University of Victoria Law School and articled with the British Columbia Civil Liberties Association on behalf of which she appeared at the Braidwood Commissions of Inquiry. Sara is a litigation lawyer and handles bylaw enforcement matters. She also provides legal opinions on a wide variety of matters, and is the go-to person in our firm for conflict of interest opinions.

Rachel Forbes graduated from the University of Victoria Law School, articled with the Environmental Law Centre and Ratcliff & Company, and then practised law as an associate at Ratcliff. She has an undergraduate degree in urban studies and worked as a planning assistant for the UniverCity development on Burnaby Mountain. Rachel provides legal opinions on a wide variety of municipal law matters, drafts agreements in relation to real property and other matters, drafts bylaws, and is the go-to person in our firm for freedom of information and privacy protection.

Marisa Cruickshank has had extensive experience at a major British Columbia law firm preparing legal opinions on a wide range of matters, including in relation to constitutional, administrative, environmental and copyright law issues relevant to municipal law. Marisa graduated from University of Victoria. She was awarded five major scholarships and academic awards. She also served as a judicial law clerk in the British Columbia Court of Appeal.

Don Lidstone Q.C. has practiced generally in the area of local government law since 1980. His focus is in all the areas of local government law. Invited to speak regularly at conference, symposia and universities, he has chaired the Sustainable Region Initiative (Governance and Finance), Liquid Waste Expert Review Panel, Fire Services Review Panel, Whistler Waste Blue Ribbon Panel, and the Municipal Law Section of the British Columbia Branch of the Canadian Bar Association. Mr. Lidstone has published numerous papers and manuals and consulted on the development of the British Columbia Community Charter and other municipal statutes in a number of provinces. He was designated Queen's Counsel in 2008.

Jessica McKeachie is an Articled Student. She graduated from the Queen Marie University of London in 2007 with an Honours Law Degree, worked in Brisbane, Australia for a law firm that provided legal services to municipalities and worked for the Braidwood Commissions of Inquiry throughout 2009.

Stuart Ross will be articling with our firm commencing June 1, 2010. Stuart drafted bylaws and conducted legal research for the City of Coquitlam Legal Department for the past two summers. Stuart won three scholarships this year at University of Victoria, including for the highest marks.