Lidstone & Company Law Letter

In this issue

Court of Appeal Upholds Latecomer Bylaw

The Court of Appeal recently handed down its judgment in *Okanagan Land Development Corporation v. City of Vernon*, 2012 BCCA 332. Vernon had appealed the decision of Madam Justice Kloegman, which granted OLDC a declaration that Vernon's latecomer bylaw was invalid. The Court of Appeal unanimously allowed the appeal, set aside the trial Judge's decision, and declared the bylaw valid.

At the summary trial, Madam Justice Kloegman had held that the bylaw was invalid because:

(a) Vernon was not entitled to impose a "per unit" latecomer charge. Instead, Vernon should have imposed a pre-determined lump sum latecomer charge that reflected the total anticipated/potential development of each parcel;

(b) Vernon was not entitled to impose the latecomer charge at the earlier of subdivision, application for a building permit, or connection, as the charge had to be imposed as a condition of connection or hook up to the sewer; and

(c) the bylaw was void for uncertainty.

To clarify, the trial Judge ruled that it was proper for Vernon to use the per unit method (of potential development units per parcel) to allocate the cost of the sewer line amongst the benefitting properties, but once that allocation had occurred, the latecomer charge for each property had to be equal to the lump sum thus calculated, and could not be a specified dollar amount per unit that actually connected to or used the sewer line.

The trial Judge was also critical of the bylaw on several other grounds.

Latecomer Bylaw (continued from page1)

OLDC also argued that the bylaw was invalid on the basis that it was discriminatory, but the trial Judge did not address this argument as she found the bylaw invalid on the basis of the other grounds listed above.

the Law Letter is published quarterly by:

LIDSTONE & COMPANY
Barristers and Solicitors

1300 – 128 Pender Street West
Vancouver, BC V6B 1R8
Telephone: 604-899-2269
Facsimile: 604-899-2281
lidstone@lidstone.info
www.lidstone.info

Thanks to our editors Deborah Low and Kimberly Mittelsteadt.

On appeal we argued that the trial decision imposed restrictions on municipalities that are not supported by the wording of s. 939. In particular, we argued that:

(a) section 939 of the Local Government Act authorizes a "per unit" latecomer charge;

(b) latecomer charges may be imposed upon the earliest of subdivision, application for a building permit, or connection; and

(c) the bylaw is not void for uncertainty, nor is it discriminatory.

The Court agreed, and held that the trial Judge's interpretation of the latecomer provisions was unduly restrictive.

With respect to Madam Justice Kloegman's finding that "per unit" latecomer charges were precluded, the Court held that this conclusion was not supportable on the plain reading of the legislation. The Court further held that the allocation of the cost of excess or extended services among benefitting properties is a matter of municipal discretion, and thus the issue that is properly the subject of judicial oversight is whether the municipality exercised that discretion in a reasonable manner. The Court ruled that the "per unit" method of cost apportionment in the bylaw was a reasonable exercise of Vernon's discretion.

With respect to the timing of payment, again the Court disagreed with the restrictive approach adopted by Madam Justice Kloegman, and held that collection of latecomer charges at the earlier of subdivision, building permit, or connection is consistent with the latecomer provisions and is permissible.

With respect to the standard of certainty that is required of municipal bylaws, the Court ruled that bylaws must be interpreted benevolently, such that a bylaw will not be found to be invalid where a reasonably intelligent person can determine its meaning and govern himself or herself accordingly.

Finally, although the trial Judge had not addressed discrimination, the Court of Appeal held that s. 939 of the *Local Government Act* authorizes municipalities to determine that the benefit of the

Latecomer Bylaw (continued from page 2)

excess or extended service varies as between benefitting properties, and that latecomer charges may also vary parcel to parcel.

In short, the Court found that Vernon acted within its authority and reasonably exercised its discretion in enacting the bylaw.

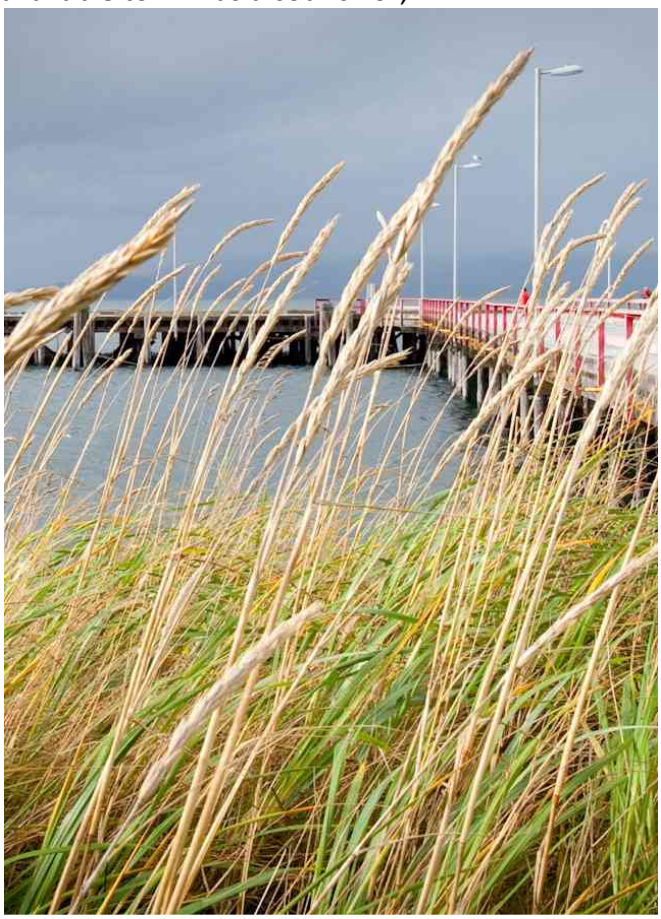
This decision will assist local governments, by confirming expressly that local governments have substantial discretion over how latecomer charges are allocated and collected. ***Sara Dubinsky***

Councillor's conviction under FOIPPA upheld

Last September, we provided an overview and discussion of the Provincial Court's decision in *R. v. Skakun*, in which a Prince George councillor was convicted for disclosing a confidential workplace report to the CBC in breach of s. 30.4 of the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"). Section 30.4 prohibits the unauthorized disclosure of personal information in the custody and control of a public body by an employee, officer, or director of the public body. Mr. Skakun appealed his conviction, but it was recently upheld by the Supreme Court of BC in a decision that was released at the end of July. A brief summary of the appeal and a comment on its relevance for local governments follows.

At trial, Mr. Skakun had argued that s. 30.4 of FOIPPA did not apply to him because the reference to "officer" did not include a city councillor. He also claimed he should be protected as a whistleblower. The court dismissed both of these arguments, convicted Mr. Skakun and fined him $750. On appeal, Mr. Skakun raised four arguments:

1. He argued that the trial judge erred in law in finding that a municipal councillor was an "officer" of a public body under s. 30.4;
2. He argued that the trial judge erred in law in finding that a whistleblower defence was not available to him as a councillor;



3. He argued that the trial judge materially misapprehended his evidence, made unreasonable findings of credibility against him and thereby unreasonably rejected his evidence in convicting him; and
4. He argued that the trial judge conducted the trial in a manner that gave rise to a reasonable apprehension of bias.

All four of Mr. Skakun's arguments were dismissed. The reasons are fairly unremarkable in the sense that they do not really add anything to the trial judge's analysis of the issues. Mr. Justice Romilly was entirely deferential to the trial judge's findings, noting that the trial judge had provided a clear explanation as to why Mr. Skakun was an

Councillor's Conviction (continued from page 3)

"officer" as that term is used in s. 30.4 and why the whistleblower defence did not apply in the circumstances. With respect to the credibility argument, Mr. Justice Romilly noted that the trial judge had properly instructed himself with respect to issues of reasonable doubt and had set out a number of instances and statements in the accused's testimony which led him to doubt his credibility. The judge's observations were amply supported by the evidence. Finally, Mr. Justice Romilly dismissed the argument that the trial had been conducted in a manner that gave rise to a reasonable apprehension of bias. He noted that he had reviewed the transcripts, the allegations made by Mr. Skakun on appeal, and the reply to those allegations by the Crown. He was not satisfied that Mr. Skakun had proved that an informed person, viewing the manner realistically and practically and having thought the matter through, would think the trial judge had not decided the matter fairly.

Although the appeal decision most notably demonstrates the high standard of deference that will be applied to summary conviction decisions, we think it is nonetheless relevant to local governments for the following reasons:

1. It affirms that council members are subject to the requirements of FOIPPA, which we think is consistent with one of the purposes of the Act: the prevention of unauthorized disclosure of personal information. As the trial judge pointed out (and the appeal judge affirmed), to find otherwise would be to permit councillors to commit the very mischief FOIPPA is designed to prevent.

2. The *Skakun* case suggests that it is unlikely a Council member would ever be able to rely on a civil whistleblower defence to justify the unauthorized disclose of personal information.

As the trial judge in *Skakun* noted, a civil whistleblower defence is generally not available in criminal or quasi-criminal proceedings, such as those under FOIPPA. The defence generally arises in the context of an employer/employee relationship, which would not necessarily extend to protect council members (who are considered "officers" rather than "employees"). Employees rely on the defence as an exception to the duty of loyalty they owe their employers, but must establish compelling circumstances to justify the disclosure of information, such as illegality by the employer or a risk to the health or safety of others. The defence also requires employees to have exhausted internal procedures before going public. In *Skakun*, for example, the judge noted that the councillor had not taken any of his concerns to the City Manager; nor had he placed a motion before City Council asking that the report be disclosed in accordance with FOIPPA. In fact, he had not taken a single step using internal processes at the City or any of the processes set out under FOIPPA to disclose the information he wished disclosed.

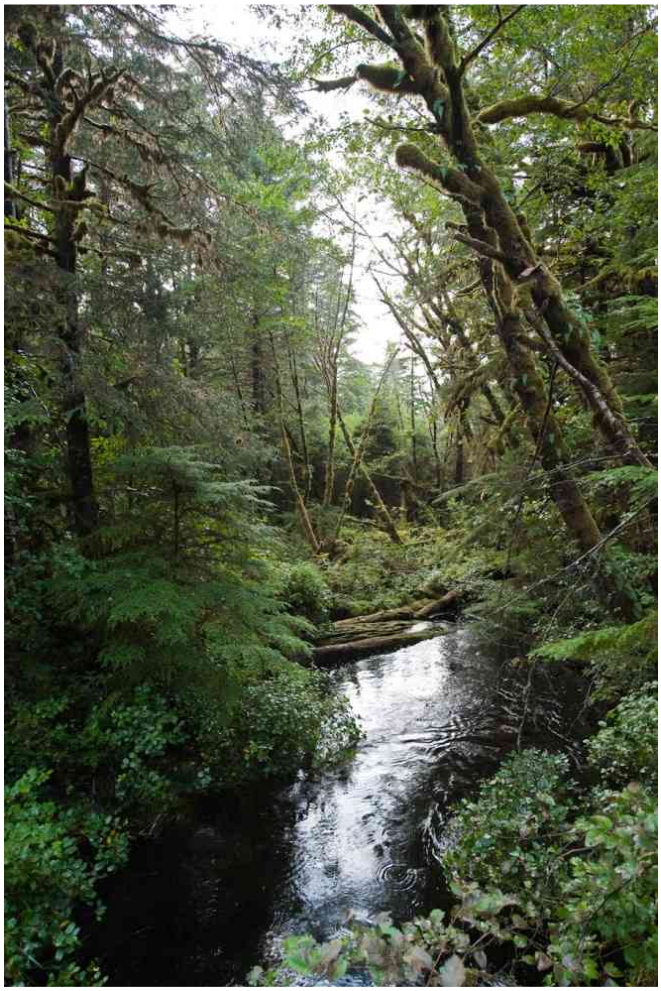
FOIPPA attempts to strike a balance between the public interest in disclosure of information and the importance of personal privacy and judges are going to defer to this in considering defences to allegations of unauthorized disclosure. Therefore, council members (and all other officers, employees and service providers) are best advised to strictly adhere to the requirements of FOIPPA before disclosing personal information. ***Marisa Cruickshank***

Avoiding a Standoff: Regulating within the spheres of concurrent authority

We are frequently asked to advise our clients about the interpretation and practicalities of sections 9 and 10 of the *Community Charter*, S.B.C. 2003, c. 26 (the *Charter*"), in which the Province has set out the manner wherein both a local government and the Province may govern in relation to areas of concurrent authority. These requests include questions relating soil removal and deposit bylaws; hunting and trapping bylaws; use of pesticides within municipalities and bylaws requiring developers to comply with building safety requirements that are more stringent than those set out in the *Building Code*.

The introduction of the *Charter* provided local governments with a broad range of powers, set out in large part in section 8 of the *Charter*. This broad grant of authority differed greatly from the historical model of municipal power, whereby local governments were found to only hold those powers explicitly provided for by enabling legislation. Perhaps in recognition of the fact that this broad grant of authority was much more likely to conflict with spheres of Provincial authority, the Province included, in sections 9 and 10 of the *Charter*, the steps a local government must take when regulating in areas which overlap with Provincial jurisdiction.

The starting point in such an analysis is section 10 (1), which provides that a municipal bylaw has no effect if inconsistent with a Provincial enactment. Read together with subsection 10(2), this means that a municipal council has authority to pass a bylaw which "meets or beats" a Provincial enactment, but if it falls short of a provincial standard it is of no force and effect. This is an extension of the normal rule of interpretation that a municipal bylaw only conflicts with a Provincial enactment where compliance with one would mean defiance of the other.[1] Instances of conflict do not arise in situations where the conditions imposed by the local government are more restrictive than those of the Province, hence, "meet or beat." In such a circumstance, the party must simply comply with the stricter set of



conditions, so as to be in compliance with the requirements of both levels of government. For example, a soil removal and deposit bylaw which sets up a permitting scheme does not necessarily conflict with the Provincial *Mines Act* permitting system, and a permit issued pursuant to a soil removal and deposit bylaw which imposes stricter

[1] *Squamish (District) v. Great Pacific Pumice Inc.*, 2003 BCCA 404

Avoiding a Standoff (continued from page 5)

requirements on an aggregate producer than does a corresponding *Mines Act* permit does not necessarily conflict with the Provincial permit.

However, section 10 is not the end of the analysis. Section 9(1) of the *Charter* states that bylaws enacted under section 8(3) relating to:

- public health;
- protection of the natural environment;
- animals in relation to wildlife;
- buildings and other structures establishing standards that are or could be dealt with by Provincial building regulations; or
- the prohibition of soil removal or deposit,

require one or more of the following, prior to being enacted:

- a regulation which provides that one or more municipalities may exercise the impugned authority;
- an agreement between the Minister and one or more municipalities providing for the exercise of the impugned authority; or
- Ministerial approval.

This requirement is akin to those found elsewhere in the *Charter* and *Local Government Act, R.S.B.C 1996, c. 323* (for example, the requirement for ministerial approval of a soil removal and deposit bylaw which requires that applicants pay a fee for a permit). So, for instance, if a municipality wishes to ban certain kinds of traps within municipal boundaries, it must obtain Ministerial approval for such a bylaw; enter into an agreement with the Province pursuant to section 9(5) of the *Charter*; or petition the Province to pass a regulation authorizing the municipality to enact a trap ban bylaw. Similarly, in light of the fact that the Province has taken the position that sprinklers are a "building standard", if a municipality wishes by bylaw to require a developer to comply with a requirement for a higher number of sprinklers, it must first obtain the approval of the Minister under section 9 of the *Charter* or enter into an agreement with the Minister to that effect.

It is inevitable that there are times when a municipality will disagree with the Province about the scope of municipal authority in relation to areas of concurrent jurisdiction. It is perhaps for this reason that the provincial legislature saw fit to enact sections 9 and 10 of the *Charter*. However, it is important to note that section 9 only applies to those exercises of municipal authority that are explicitly set out in that section, and for that reason clients sometimes ask us to think of alternative ways by which they might regulate to achieve their desired outcome, that is, ways that bring the municipality outside the scope of sections 9 and 10 of the *Charter*. ***Matt Voell***

PERMISSIVE TAX EXEMPTIONS

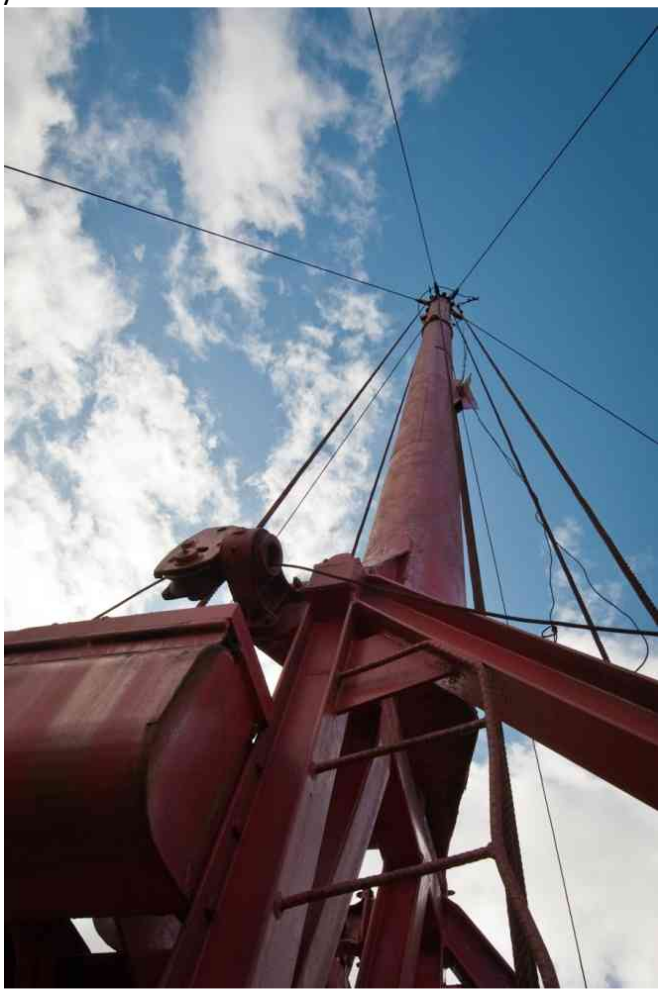
Permissive tax exemptions are discretionary tools that local governments can use to accomplish a wide variety of economic, social and environmental objectives. Municipalities are authorized to grant these permissive tax exemptions in accordance with Division 7 of Part 7 (sections 224 -226) of the *Community Charter*. Sections 809 – 812 of the *Local Government Act* provide equivalent exemptions for regional districts. Sections 224 – 226 of the *Charter* provide municipalities with three categories of exemptions. There is general authority for permissive exemptions under section 224, permissive exemptions for partnering, heritage, riparian and other special circumstances under section 225 and permissive exemptions for revitalization under section 226.

Under section 224, municipalities are given general authority to grant discretionary tax exemptions in a number of circumstances set out in that section for certain public, non-profit or public service and related uses. The interests in real property for which tax exemptions are

Permissive Tax Exemption (continued from page 6)

permitted under section 224 include those owned or held by charitable or non-profit corporations, municipalities, regional districts or other local or public authorities, corporations providing services to the municipality under a partnering agreement, religious organizations, athletic or service clubs and persons or organizations operating private licensed private hospitals or community care facilities. For most of the exemptions permitted under section 224, the interest in land must be used for the public, non-profit or public service purposes of the person or organization holding the interest in the property. For example, under subsection 224(2)(a), a permissive tax exemption is available for land or improvements owned or held by charitable, philanthropic or other not for profit corporations only if council considers that the land or improvements are used for purposes directly related to the purposes of the corporation. An exemption would not be available if the land were used by the charitable corporation for commercial purposes or for other purposes unrelated to the charity. Likewise, exemptions for land or improvements owned or held by athletic associations under subsection 224(2)(i) would only be available if the land or improvements is used as a public park or recreation ground or for public athletic or recreational purposes.

Exemptions under section 224 may be for a period of up to ten years and may only be granted by bylaw which must be preceded by public notice of the proposed bylaw in accordance with section 227. The notice must identify the property that would be subject to the bylaw, describe the proposed exemption, state the number of years that the exemption may be provided and provide an estimate of the amount of taxes that would be imposed on the property if it were not exempt for the year the proposed bylaw is to take effect and the following two years. A permissive tax exemption under section 224 or an exemption under section 225 or 226 does not apply to taxation in a calendar year unless it comes into force on or before October 31st in the preceding year.



Section 225 provides special exemption authority for certain eligible properties which are defined in subsection 225(2) as partnering properties, heritage properties, riparian properties, cemetery properties and golf course properties. Eligible partnering properties are properties owned by a person or public authority providing a municipal service under a partnering agreement that are used in relation to the municipal service provided. Eligible heritage properties are protected heritage properties, those properties subject to heritage revitalization agreements under section 966 of the *Local Government Act* or subject to a section 219 covenant that relates to the conservation of heritage property. Eligible riparian properties are riparian lands that are subject to section 219 covenants relating to the protection of riparian

Permissive Tax Exemption (continued from page 7)

property and granted to the municipality providing the permissive tax exemption.

Exemptions under section 225 are granted by the enactment of a bylaw that must be preceded by notice under section 227 in the same manner as the general exemptions under section 224. In addition, the bylaw may only be adopted by an affirmative vote of at least two-thirds of all council members. The bylaw exempts eligible property to the extent provided in the bylaw and subject to the conditions that may be established by an exemption agreement between the municipality and the owner of the property subject to the exemption. The exemption agreement may require the eligible property to be subject to a section 219 covenant in favour of the municipality and provide that the exemption is subject to certain conditions that, if not satisfied, will result in the property owner paying an amount determined by the agreement. Unlike exemptions under section 224 or 226, there is no time limitation for permissive tax exemptions granted under section 225.

The third category of permissive tax exemptions for revitalization purposes are dealt with in section 226 of the *Community Charter*. Revitalization tax exemptions are flexible enough to be used by municipalities to achieve a wide range of municipal objectives in a wide range of areas. Their most obvious use is to encourage economic development and investment; however, they may also be used as a tool by municipal governments to accomplish other objectives. For example, in the environmental context, revitalization exemptions may be used by municipalities to encourage green building or brown field development. In the context of social development, revitalization exemptions can be used to encourage the development of rental or affordable housing. Revitalization exemptions may also be used for other municipal objectives such as heritage preservation, increasing density or beautification of neighborhoods.

A revitalization tax exemption under section 226 may only apply if a revitalization program bylaw is enacted, the municipality enters into an exemption agreement with the property owner and an exemption certificate for the property is issued for the property. Prior to amendments made to the *Community Charter* in 2007, revitalization bylaws were required to designate areas that were to be subject to the exemption; however, the legislation is no longer so restrictive and revitalization tax exemptions may provide different terms and conditions for different areas, property classes and uses and circumstances within the municipality. Under subsection 226(4), the revitalization tax exemption bylaw must include a description of the reasons for and objectives of the program, a description of how the program is intended to accomplish the objectives, a description of the kinds or property, related activities or circumstances that will be eligible for the tax exemption, the extent and amount of the tax exemptions available and the term of the exemptions which may not be longer than 10 years. The revitalization program bylaw may also include other provisions that council considers advisable including requirements that must be met before an exemption certificate is issued and conditions that must be included in the exemption certificate

Similar to exemptions under sections 224 and 225, revitalization tax exemption program bylaws under section 226 must be preceded by notice under section 227 with the additional requirement that the notice include the reasons for and objectives of the proposed program, how the proposed program is intended to accomplish the objectives, the kinds of property, activities or circumstances that will be eligible for a tax exemption and the extent, amounts and maximum terms of the exemptions that may be provided

Permissive Tax Exemption (continued from page 8)

under the proposed program. Before adoption of a revitalization tax exemption program bylaw, council must also consider the bylaw in conjunction with the objectives and policies for permissive tax exemptions set out in its financial plan under section 165(3.1)(c).

Permissive tax exemptions are discretionary instruments that should be used carefully by municipalities. The issue of discretion was raised in Westwood Congregation of *Jehovah's Witnesses v. Coquitlam (City),* (2006), 272 DLR (4th) 675 (BCSC). In that case, the petitioners applied for an order in the nature of mandamus directing the City of Coquitlam to include certain property in its Permissive Tax Exemption Bylaws. The petitioners, among other things, alleged that the refusal to grant such an exemption was ultra vires City Council. Addressing this issue, the court concluded that the municipality had broad discretion to not grant a permissive tax exemption under section 224; however, the court also found that in refusing the petitioners' requests to make submissions to council in respect of the exemption and in not providing reasons for the refusal, council had breached the requirements of procedural fairness and the matter was remitted to council for reconsideration. Given the judgment in *Westwood Congregation of Jehovah's Witnesses v. Coquitlam (City)*, it would be advisable for municipal councils to give applicants for permissive tax exemptions who are at the higher level of *Charter* rights (such as churches) a reasonable opportunity to make submissions. Under section 165(3.1)(c) of the *Charter*, a municipality's financial plan must set out the objectives and policies with respect to the use of permissive tax exemptions and municipal councils should consider the use of permissive tax exemptions within the context of those objectives and policies. Before enacting a permissive tax exemption, municipal governments should carefully consider the results they hope to achieve through the exemptions as well as the effect the exemptions will have on the overall economic, social and environmental well-being of the community. In particular, before developing a specific permissive exemption policy, council may wish to consider the municipality's goals, values and needs, how effectively they would be addressed through the exemptions, and the immediate and long-term implications for the municipal budget and ratepayers. The permissive tax exemptions in sections 224 – 226 of the *Charter* provide great flexibility with respect to the degree, duration and conditions of the exemptions and council will want to carefully consider how to achieve the proper balance in granting them.
Lindsay Parcells

ALIB v. British Columbia: Court of Appeal Limits Duties to Consult and Accommodate

The British Columbia Court of Appeal has ruled that the Provincial Government consulted with the Adams Lake Indian Band adequately prior to issuing an Order in Council to incorporate Sun Peaks Mountain Resort Municipality. The Supreme Court had declared that the Provincial Government failed to satisfy the constitutional duty to consult and accommodate the interests of the First Nation. The Supreme Court had also directed the Province to consult at a "deep" level. Overturning the Supreme Court decision, the Court of Appeal held that the consultation was adequate and the accommodation by the Crown was reasonable in the circumstances. The Appeal Court held that the Province provided information to the First Nation about the legal implications of incorporation, gave the First Nation reasonable opportunities to comment, and otherwise provided for the degree of thorough and comprehensive consultation that is required for a Provincial decision that falls at the low end of the consultation spectrum.

ALIB (continued from page 9)

The Sun Peaks Ski Area (formerly Todd Mountain) was located in a rural area of a Regional District. Using the Whistler precedent, the Sun Peaks Resort Corporation entered into a master development agreement with the Province in relation to the development of the ski resort. As the resort developed, the population of residents and of non-resident property owners increased significantly to the extent they sought incorporation as a resort municipality.

Throughout the legal proceedings, the Province took the position that the consultation was adequate. It said that it had created a municipal First Nations Advisory Committee, it responded to all questions raised by the First Nations, it imposed a regulatory obligation on the provincial Minister to approve the Sun Peaks official community plan and land use bylaws, and it agreed to respond to the principal issues raised by the First Nations not in the context of the municipal incorporation but in relation to the long range consultation and accommodation process associated with the ski corporation Master Development Agreement.

In the ALIB case, the Court of Appeal started with the proposition that the Crown owes a constitutional duty to consult a First Nation if the Crown is considering a decision that may have an adverse impact on aboriginal rights or title claimed by the First Nation. This conclusion did not depart from that of the Supreme Court. The provincial government owes a constitutional duty to consult a First Nation if the Crown is considering a decision that may have an adverse impact on aboriginal rights or title claimed by a First Nation: *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73. This duty to consult arises from the "honour of the Crown", under which the Crown must consult and in some cases accommodate First Nation interests with a view to not prejudicing the interests while the ultimate claims are being resolved.

However, the Court of Appeal found that the incorporation of a municipality is an issue that falls at the low end of the consultation spectrum, as opposed to an issue that falls at a higher end so as to require deeper consultation.

In regard to "strength of claim analysis", the Court of Appeal found that the incorporation of the Sun Peaks municipality replaced governance by the Regional District with governance by a municipality. The Court held that this change did not place the First Nation in a worse position than prior to municipal incorporation. Therefore it was unnecessary for the Crown to deliver a "strength of claim analysis".

The Court of Appeal then turned to the issue of accommodation of the First Nation. Given the Provincial regulatory requirement that the Sun Peaks municipality establish a First Nations Advisory Committee, the Court found the accommodation by the Crown to be reasonable in the circumstances.

In conclusion, the Court of Appeal has established that provincial consideration of a decision that falls at the low end of the consultation spectrum (such as municipal incorporation) does not require deep consultation. If the adverse impacts on claimed aboriginal rights or title are not substantial, the Province is not obligated to provide a strength of claim assessment and impact assessment. It is interesting to note that the Court of Appeal also stated that in relation to judicial consideration of the Crown's consultation and accommodation conduct, the prior historical conduct is not relevant to the Court's consideration of the adequacy of the consultation and accommodation required in relation to the Crown decision (in this case municipal incorporation) that is before the Court.

Don Lidstone

Canadian Wireless Telecommunications v Nanaimo, 2012 BCSC 1017

This was a petition by the telecommunications trade association and Telus, Rogers and Bell, challenging the validity of a City of Nanaimo bylaw. The petitioners sought an order to quash the bylaw or a declaration that the bylaw is inapplicable to them. The bylaw required telecommunications operators that provided its customers with access to the 911 Call Answer Centre operated by the City to either:

- enter an agreement with the City to bill and collect a monthly "Call Answer Levy" from every subscriber with a phone number corresponding with the City; or
- to pay a $30 "Single Call Fee" for every 911 call placed within City boundaries by the operator's customer.

Call Answer Levies are levies upon the customer, not the telecommunications operator. The operator acts as agent for the City in billing the customer and must then remit the amount to the City. In contrast, Single Call Fees are levies upon the telecommunications operator, not the customer, as the operator is not required to bill its customers for the levy.

Wireless service customers accounted for over 50 per cent of the calls to 911 in the area in 2011, and the bylaw was an attempt to have both land line and wireless users contribute to the funding of the 911 service.

The petitioners submitted that the bylaw: was an unauthorized tax on wireless service providers operating within City boundaries; was constitutionally invalid, as it imposed an arrangement on wireless service providers that related to the regulation of services by inter-provincial undertakings; and was constitutionally inapplicable to wireless service providers by reason of the principle of interjurisdictional immunity.

The Court held that the bylaw was invalid, as it imposed a tax on wireless service providers that the City lacked the authority to impose. The Court determined that the Single Call Fee was a tax for the following reasons:

- It was compulsory and enforceable by law. A practical compulsion existed, as the CRTC required wireless service providers to connect wireless 911 calls to Central Island 911.
- It was levied by a public body.
- It was intended for the public purpose of financing the cost of operating the Central Island 911 centre, but the fee was imposed on wireless service providers, who were not the recipients of that service.
- There was no reasonable nexus between the amount of the levy and the service provided, as the fee was calculated on the number of calls placed rather than the number of customers to whom the service was offered.

Therefore, the Court found that the Single Call Fee had none of the characteristics of a user fee and all of the characteristics of a tax. The fee was found to be ultra vires the City, and the bylaw was quashed. The Court stated that it was therefore unnecessary to address the arguments related to the division of powers and interjurisdictional immunity. ***Matt Voell and Lisa van den Dolder***

Lidstone & Company Personnel

Paul Hildebrand is Associate Counsel at Lidstone & Company. Paul 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. Paul has a Doctorate in Economics in addition to his Law Degree and Master of Science degree in mathematics. For nearly 29 years, Paul Hildebrand has practiced law in the area of complex litigation, including a 12 year stint with McAlpine & Company, one of the leading complex litigation firms in Canada. Paul is responsible for the

Lidstone & Company Personnel (continued from page 11)

conduct of our local government clients' litigation matters, including defense of claims, insurance matters, suing other parties, injunctions, appeals, 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, and real estate transactions.

Lindsay Parcells practices municipal law with a particular interest in land use, real property, corporate, commercial, mediation and environmental matters. Lindsay has 20 years of legal experience. He was called to the Alberta bar in 1992 and the British Columbia bar in 1995. Lindsay completed a Masters degree in Municipal Law from Osgoode Hall Law School in 2009 and a combined Bachelors of Laws and Masters of Business Administration degree from Dalhousie University in 1991. Before attending Law School, he served for one year as a legislative intern at the Alberta Provincial Legislature. Lindsay is currently Co- Chair of the Municipal Law Section of the BC Branch of the Canadian Bar Association.

Maegen Giltrow practices in the areas of governance, bylaw drafting, environmental law and administrative law. She is also a well known practitioner in the area of aboriginal law, and negotiated a treaty and worked on the Constitution, land use and registration laws and regulatory bylaws for a number of First Nations before she entered the practice of municipal law. Maegen clerked with the British Columbia Court of Appeal after graduating from Dalhousie Law School in 2003.

Don Lidstone Q.C. has practiced generally in the area of local government law since 1980. His municipal law focus is in the areas of constitutional, administrative, and environmental law, particularly in respect of governance, land use/sustainable development, regulatory approvals, and legislative drafting. Invited to speak regularly at conferences, 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. Don has published numerous papers and manuals and consulted on the development of the *Community Charter* and other municipal statutes in a number of provinces. He was designated Queen's Counsel in 2008.

Sara Dubinsky is a graduate of the University of Victoria Faculty of Law. Sara summered with a boutique litigation firm in Vancouver and appeared at the Braidwood Commissions of Inquiry on behalf of the British Columbia Civil Liberties Association, where she articled. Sara is a litigation lawyer and handles bylaw enforcement matters. She also provides legal opinions on a wide variety of issues, and is the go-to person in our firm for conflict of interest opinions. Sara received three awards in law school for her performance in the Wilson Moot Competition.

Marisa Cruickshank advises local governments in relation to a variety of matters, with an emphasis on constitutional, administrative and environmental law issues. Marisa completed her law degree at the 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.

Lisa van den Dolder completed her law degree at the University of Victoria. During that time, she had co-op terms as an advisor at the University of Bristol's Law Clinic in England, and as a Contract and Policy Analyst at the Capital Regional District in Victoria. Lisa has a Master's Degree in English from the State University of New York at Buffalo. Lisa completed her undergrad at Thompson Rivers University with a BA in Psychology and English, and before studying law she managed website content for Halifax Bank of Scotland and Hilton International in the UK.

Matt Voell obtained his law degree at the University of British Columbia. After completing law school Matthew worked as an Ethics and Research Fellow in the areas of health and intellectual property policy, and completed the first half of his articles at a public law litigation boutique in Victoria, BC. Prior to commencing articling Matthew partially completed a Master of Laws graduate degree, and in his spare time continues to work on his graduate thesis. Matthew has also volunteered with the Access Pro Bono Society of British Columbia and the UBC Law Student Legal Advice Clinic.