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Law Letter

In this issue

Local governments and Canada's new anti-spam legislation	Local government election reform update	The duty to reject non-compliant tenders	Crown and local government OCP consultation with First Nations	Local government participation in administrative tribunal hearings
p. 1	p. 5	p. 7	p. 10	p. 14

Local Governments and Canada's New Anti-Spam Legislation

On July 1, 2014, the majority of Canada's Anti-Spam Legislation (CASL)[1] will come into force. Given its scope and penalties, CASL is already considered one of the world's toughest laws to combat spam. This bulletin will provide an overview of what local governments need to know in order to achieve compliance with CASL when sending electronic messages with content that is subject to the new law.

Affected electronic messages include many types that are sent out routinely by local governments, including in relation to land, services, business or investment activities, or the promotion or advertising of these things.

Penalties are severe: the maximum per violation fine is $1 million for individuals or $10 million for an organization. Elected officials and officers can be liable if they directed, authorized, assented to, acquiesced in or participated in the commission of the violation. Organizations will also be vicariously liable for employee actions. As of 2017, private actions for damages will be authorized.

Does CASL apply to local governments?

Yes, local governments will be affected by the new law. CASL's application is determined by the content of the message rather than the sender. Any individual or organization that sends a regulated electronic message from within Canada

[1] There is no formal short title for the new legislation, but the acronym CASL has been widely adopted. CASL's official long title is: *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*.

New Anti-Spam Legislation (continued from page 1)

must therefore conform to CASL's requirements. CASL prohibits several broad categories of electronic activity, including spamming, which means sending what CASL terms "commercial electronic messages" (CEMs).

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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

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What is a CEM?

CASL section 6 prohibits sending unsolicited CEMs, whether in the form of an email, text message, or another similar form of electronic communication (e.g., messages sent via social media). Passive forms of communication, such as a website, will not be considered CEMs.

A CEM has been defined as an electronic message, one of the purposes of which is to encourage participation in commercial activity. Commercial activity is any transaction, act or conduct or any regular course of conduct that is of a commercial character, whether or not the person who carries it out does so in the expectation of a profit.

CEMs include electronic messages that:

- are offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;
- are offers to provide a business, investment or gaming opportunity;
- advertises or promotes anything referred to in the above two bullets; or
- promotes a person, including the public image of a person, as being a person who does anything referred to in any of the above three bullets, or who intends to do so.

CASL prohibits sending a CEM to an electronic address unless: (1) the person to whom the CEM is sent has consented to receiving it and (2) the CEM conforms to CASL's content and form requirements.

What is required for consent?

CASL contemplates two kinds of consent: implied and express.

Implied Consent

Consent is implied where there is:

a. an existing business relationship or an existing non-business relationship;
b. compliance with both of the following:
   (i) conspicuous publication of an email address, and

New Anti-Spam Legislation (continued from page 2)

(ii) the CEM is relevant to that person's business, role or functions in a business capacity; or

c. a business card exchange when the CEM is relevant to the person's business, role, functions or duties and has not indicated a wish not to receive unsolicited CEMS at the electronic address.

CASL also contains a transitional provision, under which consent to send CEMs is implied for a period of 36 months beginning July 1, 2014, where there is an existing business or non-business relationship that includes the communication of CEMs. Local governments may use this time to seek express consent for the continued sending of CEMs. Note that once express consent is obtained, that consent does not expire unless the recipient withdraws their consent.

For a relationship to be an existing business relationship, the commercial activity giving rise to the relationship must have occurred within the past 2 years.

Express Consent

Express consent must be positively or explicitly indicated. In other words, CASL requires an opt-in method as opposed to leaving it up to the person from whom consent is sought to opt-out. Acceptable methods include checking a box or typing an email address into a field to indicate consent. Additionally, the Canadian Radio-Television Telecommunications Commission (CRTC), the government body tasked with ensuring CASL compliance, recommends sending confirmation of receipt of express consent to the person whose consent is being sought.

An electronic message sent to obtain consent is also considered a CEM, which may not be sent without consent, subject to the below-discussed exceptions.

What are the form and content requirements?

In addition to consent, the form and content of the CEM must conform to CASL's requirements.

First, the CEM must identify the person who sent the message and the person – if different – on whose behalf the CEM is sent. The CEM must also contain the contact information of the sender and must allow the person receiving the CEM to unsubscribe. This information must be set out clearly and prominently.

Identification

The CEM must identify the sender by name and include a physical mailing address, and either a telephone number, an email address or a web address.

Unsubscribe Mechanism

CASL requires that each CEM include an unsubscribe method that can be readily performed. In general, the unsubscribe option must be available within 2 clicks. An example is a hyperlink within the CEM that allows the recipient to unsubscribe by clicking on it. Should the recipient choose to unsubscribe, it must take effect within 10 business days.

Exemptions

CASL exempts the following CEMs from the application of section 6 entirely:

a. CEMs sent by or on behalf of an individual to another individual with whom they have a personal or family relationship, as defined in the regulations;

New Anti-Spam Legislation (continued from page 3)

b. CEMs sent to a person who is engaged in a commercial activity and consists solely of an inquiry or application related to that activity; or

c. CEMs of a class, or is sent in circumstances, specified in the regulations.

Additionally, the regulations contain the following exemptions:

- The CEM is sent within an organization or between organizations that have an existing relationship and the message concerns the activities of the organization to which the message is sent;
- The CEM is sent in response to a request, inquiry or complaint or is otherwise solicited by the person to whom the message is sent;
- The CEM is sent to a person
  - To satisfy a legal obligation;
  - To provide notice of an existing or pending right, legal obligation, court order, judgment or tariff;
  - To enforce a right, legal obligation, court order, judgment or tariff;
  - To enforce a right arising under the laws of Canada, of a province or municipality of Canada or of a foreign state; or
- The CEM is sent by or on behalf of a political party or organization or a person who is a candidate for a publicly elected office and the message has as its primary purpose soliciting a contribution.

CASL also exempts several categories of CEMs from the consent requirement. Consent is not needed where the message:

- Provides a quote or estimate, if requested by the recipient;
- Facilitates, completes or confirms a commercial transaction;
- Provides notification of factual information about ongoing use or purchase of a product, good or service offered under a subscription, membership, account or loan;
- Is directly related to an employment relationship or benefit plan; or
- Delivers a product, good or service, including updates or upgrades further to a transaction previously entered into.

These CEMs are exempt from the consent requirement only, and must still comply with the form and content requirements discussed above.

What are the penalties for non-compliance?

CASL imposes substantial administrative monetary penalties. Anyone violating CASL section 6 could be subject to a maximum per violation fine of $1 million for individuals or $10 million for an organization.

Directors and officers can be liable if they directed, authorized, assented to, acquiesced in or participated in the commission of the violation. Organizations will also be vicariously liable for employee actions.

New Anti-Spam Legislation (continued from page 4)

Additionally, CASL provides for a private right of action, but that provision does not come into force until 2017.

What should local governments be doing to prepare?

Given the potential penalties, it is imperative that local governments have a plan in place to ensure compliance with CASL. The CRTC has not yet provided interpretive guidance on how CASL might apply to communications from municipalities. While one could argue that an electronic message sent by a local government that relates to the core exercise of its municipal powers cannot be classified as strictly commercial, local governments should exercise caution. Some common forms of communication between local governments and their residents might trigger CASL's anti-spam requirements. For example, local governments often communicate about recreational programs that are offered for a fee; products that may be purchased to fulfil certain bylaw requirements; or the operation of museums, community centres, theatres or other services where entrance fees are charged. Additionally, some communications might not be offering a service in exchange for payment, but may contain advertising.

Next steps

Local governments should determine a strategy for dealing with CASL and activate that strategy as soon as possible. Before July 1, CASL's requirements do not apply. As noted above, even an electronic communication requesting express consent is a CEM under the new regime. Therefore, if express consent is required, communications requesting consent should be sent out before then.

Local governments should consider the following questions:

- With whom do you communicate and for what purpose?
- Which of these communications might be considered CEMs?
- Which of those contacts are existing relationships? How old are those relationships?
- For which communications can you imply consent?
- Do any of your communications fall within either of the exemption categories?
- What are your strategies for training staff?
- How will you keep track of consent?
- What internal policies will you develop for handling CEMs now and once the law takes effect? ***Robin Dean***

Local Government Election Reform – Local Elections Campaign Financing Act and Local Elections Statutes Amendment Act

On May 29th 2014, the *Local Elections Campaign Financing Act* (LECFA) and its supporting act, the *Local Elections Statutes Amendment Act* (LESSA), received Royal Assent. This new legislation is in effect for the November 2014 local elections. Some obligations under this legislation required action by June 12, 2014. This legislation was enacted in response to the Local Government Elections Task Force recommendations to improve the local government electoral process. Enacting this legislation is the first phase of the Ministry of Community, Sport and Cultural Development's plan to reform local government elections. The goal of the new legislation is to modernize and

Local Government Elections (continued from page 5)

reform local government campaign finance rules, including ensuring accountability, enhancing transparency, and increasing accessibility. The second phase involves implementing the recommendation of the Local Government Elections Task Force to establish expense limits for all local election campaign participants. These expense limits will not be implemented in 2014.

This article is an overview of some of the major changes made by the LECFA and the LESSA, but it is important that local governments and candidates seek further information before the upcoming elections. Information is available on the Ministry's website, with more detailed packages tailored to various local government actors expected in June.

The LECFA applies to the election of a mayor, councillor, and an electoral area director on a regional district board under the *Local Government Act*, a mayor, councillor, and Park Board member under the *Vancouver Charter*, a local trust area trustee under the *Islands Trust Act*, a trustee on a board of education under the *School Act* and any other elections prescribed by regulation.

1) Reappointment of financial agents

Financial agents may continue to act as financial agents for candidates or elector organizations until June 12th 2014, after which they must be reappointed in accordance with the new LECFA. The appointment process is similar but there are a few additional requirements. The most significant change is the requirement for an individual to provide written consent to act as a financial agent.

2) Requirement for separate campaign accounts

Candidates who run for office in multiple elections must establish campaign accounts for each election campaign by June 12th 2014. Elector organizations that endorse candidates in more than one jurisdiction and currently only have one campaign account will have until June 12th 2014 to establish additional campaign accounts for each election campaign.

3) Campaign Organizers

Under the new legislation, campaign organizers are no longer election participants. As of May 29th 2014, campaign organizers can no longer accept or receive campaign contributions, accept or receive a transfer, make deposits, incur elections expenses, or use money in a campaign account to pay or reimburse elections expenses incurred after May 29th 2014.

4) Prohibition on anonymous contributions

Individuals and organizations can no longer make an anonymous campaign contribution that has a value of more than $50.00.

5) Must record campaign period expenses and provide disclosure statements detailing campaign period expenses

Under the LECFA there are new disclosure requirements. Disclosure statements are now filed with Elections British Columbia (EBC) instead of with each respective local government and will be available to the public online. EBC is now responsible for managing the campaign financing disclosure process. Local governments will be required to provide members of the public with access to these statements but will not be responsible for retaining or maintaining them. The deadline for filing campaign financing disclosure statements has been shortened to 90 days instead of 120 days.

6) Third Parties and Third Party Advertising

The LECFA makes important changes to third party advertising. Third party advertising is election advertising other than advertising that is sponsored by a candidate as part of their election campaign or sponsored by an elector organization as part of its election campaign. Third party advertising sponsors must now register with EBC before sponsoring any election

Local Government Elections (continued from page 6)

advertising. Third party sponsors must also record and disclose sponsorship contributions and third party advertising sponsors must register and disclose their expenditure.

7) Assent Voting Advertising

Section 2 of the LECFA states that the Act also applies to Assent Voting under Part 4 of the LGA or Part II of the *Vancouver Charter*. Assent voting (or "other voting" under the *LGA* and *Vancouver Charter*) is when the assent of the electorate is required on a bylaw, referendum or other matter. Assent voting advertising is any message that promotes or opposes, directly or indirectly, the results of the assent voting.

Under Part 4 of the LECFA, all of the rules that apply to Third Party Advertising now apply to Assent Voting Advertising.

8) Obligations of Elections BC

Under the LECFA there is a new role for EBC, overseeing aspects of local elections related to campaign financing and elections advertising. EBC is now responsible for managing campaign financing disclosure requirements and enforcing campaign financing and election advertising provisions. This role extends to by-elections and assent voting.

9) Extended Term of Office

LESSA extends the term of office for local elected officials from three to four years. It will also move the general voting day from November to October, beginning in 2018.

Various amendments have been made to both the *Community Charter* and the *Local Government Act* by LESSA, to bring these acts into compliance with the LECFA. Of note is LESSA's amendment of s. 194, which now allows council to impose a fee under s. 59 [fees for providing disclosure records] for information under the *Local Elections Campaign Financing Act*.

LESSA also makes some amendments to the *Community Charter* regarding disqualification. The amending provisions concern when someone is disqualified from office for having a conflict of interest (Division 6), failing to take the oath or solemn affirmation (s. 120), unexcused absence from council meetings (s. 125), or s. 191 (unauthorized expenditures)

While the *Community Charter* already states (in s. 110) that a disqualified person cannot participate in a local government, including Vancouver City Council, the sections referred to above now state that the person disqualified cannot hold office on a local government, on the council of the City of Vancouver, on the Park Board established under s. 485 of the *Vancouver Charter*, or as a trustee under *Islands Trust Act*. The same changes are added to the *Local Government Act* in s. 154.

Similarly to the *Community Charter*, LESSA amends various sections of the *Local Government Act* to modernize and clarify certain definitions. A new section, s. 73.3, is added to outline the rules for organizations that wish to include their endorsement of a candidate on a ballot. Section 154 is amended by lowering the fine for vote buying and intimidation from $10,000 to $5,000 and imprisonment of not more than one year (down from two years). ***Claire Hildebrand***

The duty to reject non-compliant tenders and when does it arise?

Local governments in British Columbia frequently issue invitations to tender to private contractors to procure a wide variety of goods and services. The invitations to tender that are issued by local governments are subject to the jurisdiction of the courts and the common law (i.e. the law that has

Non- Compliant Tenders (continued from page 7)

developed as a result of judgments by the courts). The common law that has developed for government procurement in Canada is based on the Supreme Court of Canada's judgment in *Ontario v. Ron Engineering & Construction (Eastern) Ltd*., [1981] S.C.J. No. 13 and the cases that have followed it. Those cases have established a uniquely Canadian legal concept known as "Contract A" and "Contract B". In a local government context, "Contract A" is established when a private contractor submits a compliant bid in response to a tender call issued by the local government. "Contract B" is established when a tender award is made and the local government enters into a formal agreement with the successful bidder.

Applying the principles of contract law to the "Contract A", "Contract B" framework, the tender call issued by the local government constitutes an offer of contract and a compliant bid submitted by the private contractor constitutes an acceptance of that offer thereby creating "Contract A". The terms of "Contract A" are considered to be all the specifications and requirements set out in the tender call. For example, in a local government context, the tender call will typically describe the goods or services required and request interested bidders to submit tenders detailing the scope of their goods or services, the proposed price of their proposed goods or services and the schedule in which their goods or services will be delivered. As well, the tender call will include details of submission requirements such as the form and substance of the bid to be submitted and the date by which the bid must be submitted. All of these specifications and requirements constitutes "Contract A" once a private bidder submits a compliant bid in response to the tender call.

Courts in Canada have established a clear duty on the part of public authorities and private contractors to respect the terms of "Contract A". That duty includes a duty by public authorities to reject non-compliant bids. The duty to reject non-compliant bids is based on the notion that it would make little sense for private contractors to expose themselves to the risks associated with the tendering process if the tender calling authority was allowed to ignore the process and accept non-compliant bids. A failure to reject a non-compliant bid and subsequent award of "Contract B" to a non-compliant bidder may result in a claim for damages by an unsuccessful bidder who submitted a compliant bid. A successful claim in damages by an unsuccessful bidder will result in an award of damages for the unsuccessful bidder's lost profit and usually at least a portion of its legal costs. Local governments that fail to reject non-compliant bids may therefore end up paying twice for the same goods or services that were procured.

To protect against liability, local governments will often include "privilege clauses" in their tender calls that allow them to accept non-compliant bids in certain circumstances. A privilege clause may reserve the right of the local government to reject or all bids, to waive informalities and to accept non-compliant bids. Privilege clauses, in common with all other aspects of issuing and administering tender calls, should be used fairly and in good faith. In *Sound Contracting Ltd. v Nanaimo (City),* [2000], BCJ, No. 992, the British Columbia Court of Appeal cautioned against the arbitrary use of such clauses in tender calls:

> "It must be recognized that a compliant tender establishes a legal relationship between the parties conditioned only by the privilege clause. The privative clause gives the owner a discretion and that discretion must surely be exercised fairly and objectively. The legal relationship just described provides the basis for a court challenge by unsuccessful compliant bidders of an award to a higher bidder. While I would not attempt to establish a

Non- Compliant Tenders (continued from page 8)

> comprehensive enumeration of salient factors that that would support a successful action, it may possibly be summarized by reference to the essential requirements of objective fairness and good faith[2]."

Whether or not a privilege clause is included in a tender call, a question that frequently arises is whether tender compliance should be measured by a standard of strict compliance or a more flexible measure of substantial compliance. In the *Ron Engineering* case referenced above, the successful bidder, Ron Engineering Ltd., had mistakenly omitted certain costs from its bid that when factored in, would cause it to lose money if it was required to carry out its obligations under its accepted bid. To avoid its contractual commitments, Ron Engineering argued that a strict measure of compliance should be applied to find its bid non-compliant as a result of its failure to fill in a blank on the contract document. The Supreme Court of Canada rejected this argument because the missing information was contained elsewhere in the document. In adopting a substantial compliance standard, the court noted that "it would be anomalous indeed if the march forward to a construction contract could be halted" by such a simple omission[3]."

The British Columbia Court of Appeal also adopted a substantial compliance standard in *British Columbia v. SCI Engineers & Constructors Inc.* [1993], BCJ. No. 248. In that case, the province had advertised for tenders for a bridge construction project. Both of the appellants, as well as three other tenderers, submitted tenders and each of the appellants had made substantial revisions to their tenders within the last few minutes before the sealed tenders were opened. SCI's last revision was submitted by fax but did not comply strictly with one of the conditions of tender, which governed faxed revisions. SCI's bid was for $270,000 lower than the closest bid; however, because the low bid failed to strictly comply with certain requirements of the tender call, the provincial government had concerns about accepting it and applied to the courts to determine whether it was permitted to accept the tender. The BC Court of Appeal decided that the bid was substantially compliant and could be accepted by the government. While accepting the substantial compliance standard, the court noted that

> "it would be otherwise, of course, if a material fact were omitted from the tender, or if the meaning of the tender was unclear, but that is not the case. It could also be otherwise if there were non-compliance that intruded substantially upon the secrecy of the tenderer process. It is almost unnecessary to add that the Crown could impose a requirement for strict compliance by rewording its Conditions of Tender appropriately[4]."

British Columbia v. SCI Engineers & Constructors Inc. remains good law in Canada and several principles can be drawn from that judgment and the cases that have followed it. First, a tender that contains simple omissions or irregularities can remain capable of acceptance if it substantially complies with the requirements of the tender call. Second, substantial compliance is not met if a material fact has been omitted or the meaning of the tender is unclear. What is material will depend on the circumstances of each case. It is submitted that a material fact is one that if relied on by the local government, would significantly affect or change its decision with respect to a tender award. Third, in applying a substantial compliance standard, mischief is to be avoided and the integrity of the bidding process should be

[2] At para. 18.
[3] *Government Procurement* (*2d*), Emmanuelli at p. 239.
[4] At para. 20.

Non- Compliant Tenders (continued from page 9)

preserved[5]. This means that local governments must apply the substantial compliance standard in a reasonable way to maintain a fair and transparent tendering process. ***Lindsay Parcells***

Crown & Local Government Consultation with First Nations on OCPs

The recent decision of the BC Supreme Court in *Squamish Nation v. British Columbia (Community, Sport and Cultural Development)* 2014 BCSC 991 [*Squamish v. BC*] saw a municipality's OCP quashed because of the failure of the Province to fulfil its duty to consult with First Nations.

Squamish v. BC is a judicial review of the decision of the Minister of Community, Sport and Cultural Development ["Minister"] to approve the Resort Municipality of Whistler's new OCP under section 11 of the *Regional Municipality of Whistler Act*.

The core dispute involved the desire of the Province and Whistler to restrict growth - important in preserving Whistler's attractiveness as a destination ski resort community - and the interest of the Squamish and Lil'wat First Nations ["the Nations"] in preserving aboriginal title interests they claimed over Crown lands in the municipality.

The boundaries of Whistler include 60,000 acres of land, most of it undeveloped Crown land. The parties acknowledged the Crown land is subject to the aboriginal rights and title claim of the Nations.

Whistler's 2011 OCP restricted growth by restricting the number of "bed units" that could be constructed within the municipality. As the Court noted:

> The bed unit limit in the OCP places a limitation on the Nations' potential to develop land in an area where developable land is scarce and is strictly defined. Development that creates bed units, such as residential and tourist accommodation, is important in a tourist-based economy like that in the Whistler area. [Para. 180]

The Nations raised concerns about the bed unit limitation in proposed amendments to the OCP, stating:

> The development that has occurred to date within [Whistler] has largely been without the participation of the Squamish and Lil'wat Nations. The historical development limits and bed unit caps have been placed without consultation with the First Nations, and without recognition of their legitimate rights to economic development of their aboriginal title lands. As Crown lands are returned to the First Nations through various processes, it would not be fair to apply to those fixed development limits and bed unit caps in a manner which would preclude fair opportunities for economic development with the First Nations. [Para 67]

In my opinion, Whistler reasonably viewed the right of the Nations to develop Crown land within its boundaries as a matter for negotiation between the Nations and the Province. The municipality sent the Minister its OCP and its record of engagement with the Nations. The court noted:

[5] *Ibid*. at p. 240.

Consultation with First Nations (continued from page 10)

> The OCP sent to the Minister for approval set a bed unit limit of 61,750. As of 2010, 61,217 bed units had been allocated to existing developments or to undeveloped zoned lands. The Nations say that the remaining 533 bed units have already been allocated to developers and are unavailable. [Para 81]

Under the 2011 OCP, the Whistler Crown lands were effectively subject to a development freeze. While the Province may not be "legally bound" by an OCP, the Nations felt that the Province had not effectively protected their economic interests with respect to lands within Whistler provided to the Nations as a 2010 Olympics legacy. The Province acknowledged that "it would only become involved in an [OCP] amendment process under 'extraordinary circumstances' and such circumstances have never before arisen." [Para 142]

The court rejected Whistler's argument that the OCP is simply a policy document rather than a regulatory one which does not engage the duty to consult. Also rejected by the court was Whistler's argument that the Nations had an onus to establish the "net adverse impact" of the 2011 OCP as compared to the 1993 OCP in order to trigger a duty to consult. Mr. Justice Greyell found:

> In my view, this submission mischaracterizes the point of law that no duty to consult arises from past wrongs, including previous breaches of the duty to consult: *Rio Tinto* at para. 45. The 2011 OCP was a new plan contemplated by the Province and as such was a current course of conduct capable of triggering the duty to consult. [Para 138]

The argument that the OCP could be amended in the future was also found insufficient:

> If the OCP requires amendment to allow development in the future this fact serves as an answer to Whistler's argument that the OCP does not impose a limitation on development. If the OCP has to be amended before development can proceed then it does in fact have the potential to infringe on land the [Nations] may acquire title to in the future. [Para 141]

In reaching the decision to quash the Minister's approval of the OCP and declaring that the Province must make reasonable efforts to consult at a mid-range level, the Court elaborated on findings of interest to local governments.

First, the Court held that the statutory duty of municipalities to consult with First Nations who form part of the municipality under s. 879 of the *Local Government Act* ("statutory consultation") is distinct from the Crown's constitutional duty to consult with First Nations regarding their s. 35 rights ("Crown Consultation", "Duty to Consult"). While similar issues may arise, the nature and content of the resulting consultation is therefore different. Section 879 statutory consultation is focused on identifying and considering how and whether to address OCP-related issues between the parties, without reference to s. 35 rights or title.

Second, the development of an OCP will not, in and of itself, trigger Crown Consultation. The Provincial Duty to Consult with a First Nation arises when (1) the Crown has knowledge, real or constructive, of the potential existence of an aboriginal claim or right; (2) the Crown contemplates a decision or conduct that engages the aboriginal claim or right; and (3) the

Consultation with First Nations **(continued from page 11)**

contemplated Crown decision or conduct may adversely affect the aboriginal claim or right.

For the Duty to Consult to be triggered and affect a local government bylaw, such as an OCP, a Crown decision or conduct that may adversely affect an aboriginal claim or right must be linked to the bylaw. Certain regional district and mountain resort bylaws require Ministerial approval.

Third, the Province may delegate procedural aspects of Crown Consultation to a local government; however, the case law is clear that the delegation does not relieve the Crown of its ultimate responsibility with respect to Crown Consultation. As the Court of Appeal made clear in *Neskonlith Indian Band v. Salmon Arm*:

> …As the third order of government, municipal councils are simply not in a position to, for example, suspend the application of bylaws or the terms of OCPs, grant benefits to First Nations or indeed to consider matters outside their statutory parameters. [Para 143]

A Provincial review of Whistler's record of engagement with the Nations was insufficient to satisfy the Crown's Duty to Consult.

Fourth, the Province may delegate procedural aspects of Crown Consultation to the local government. If it does, however, the Province must clearly set out the respective roles of the local government and the Province. As the Court noted:

> As much as the Minister's office was entitled to review and inform itself from and to a degree rely upon the engagement record, the *Haida Nation* duty to consult ultimately rested with the Province. It is only the Crown in right of the Province who had the ability to provide sufficient remedies to achieve meaningful consultation and accommodation: *Rio Tinto* at paras. 59-60. [Para 208]

In *Squamish v. BC*, the court characterized the Province's subsequent Crown Consultation with the Nations as short and unproductive. While the Province is under no obligation to agree with the Nations, the Province's position was found to be intransigent and subject to an overriding concern of completing Crown Consultation and approving Whistler's OCP before the 2013 provincial election. The Court reminded the Province:

> The Crown may not conclude a consultation process in consideration of external timing pressures when there are outstanding issues to be discussed. [Para 214]

The failure of the Province to properly discharge its Duty to Consult created significant uncertainty and expense for Whistler as well as Squamish and Lil'wat First Nations.

After *Squamish v. BC*, local governments and First Nations have a clear common interest to insist that the Province engages in early and meaningful Crown Consultation where the Duty to Consult may arise. Further, if the Province proposes to delegate procedural aspects of Crown Consultation to a local government, the Province must provide the local government with clear direction on the local government's role and, in my view, should provide the local government with the requisite capacity funding to fulfil this delegated Crown Consultation responsibility.

For a further discussion of cases involving First Nations consultation and local government

Consultation with First Nations (continued from page 12)

decisions, the reader is referred to the article by Maegen Giltrow in our December 2012 Law Letter.
Rob Botterell

Local Government Participation in Administrative Tribunal Hearings

Local governments are increasingly called upon to participate in administrative tribunal hearings (also known as regulatory hearings, review panels, assessments or appeal boards). These processes commonly arise when a private company or crown corporation requires federal and/or provincial government approval to construct a facility or infrastructure (for example, dams, pipelines, waste disposal plants), or resource extraction such as mining, pulp mills, or diversion of water. This article provides a basic overview of what these hearings are, the challenges to participation, and why local government involvement is important.

Such hearings are administered by an agency other than a court, such as the BC Environmental Assessment Office, National Energy Board, BC Utilities Commission, and the Property Assessment Appeal Board. As such, the procedures for participating are less formal than a court, and the rules may vary depending on which agency is overseeing the hearing. The agency is created by legislation, which usually sets out the mandatory time limits for a public hearing. The legislation may also give the agency the authority to determine the scope and type of information required in the company's application for approval. The role of the review panel is to make recommendations to government about the project after hearing from all sides.

The idea is to make these hearings accessible to the public, so that anyone with a stake in the matter may participate and provide their input. However, these type of hearings fall under the area of administrative law, which has developed its own set of rules and terminology. Agencies and boards are required to provide a fair hearing process which allows participants to be adequately heard. At the same time, they must also follow the time limits set out by the legislation, and many of these limits have been severely shortened. In order to meet the goal of procedural fairness, public hearings have lengthy procedural guidelines which participants are expected to abide by.

Some hearings are jointly administered by provincial and federal authorities. Hearings can produce a vast amount of technical information which must be reviewed and digested before participating. For example, in the current National Energy Board hearing to determine whether Kinder Morgan/Trans Mountain can expand an oil pipeline across BC and Alberta, the company submitted a 15,000 page application which filled 37 binders and stood at over 2 metres. BC Hydro's 15,000-page environmental impact statement for the proposed Site C dam filled 29 binders.

In addition to challenging the content of the information provided by the company, participants may seek to challenge the process itself. For example, arguments can be made that a panel member is biased, the scope or list of issues to be considered is too narrow, the company's application is incomplete, or the time limits are not adequate to review the information.

Local governments have an important role in a hearing and can benefit in several ways. Many local governments are already engaged in negotiations with a proponent on its proposed project when the public hearing process starts. Participating in the hearing can strengthen the local government's negotiating position with the proponent. Statements made by the company during the public hearing go "on the record" and can be referenced when seeking binding

Administrative Tribunals (continued from page 13)

commitments further down the road. If negotiations are unproductive, the local government can maintain its position through the hearing process.

If a local government decides to take a neutral stance on the project, they should still opt to participate and secure their voice in the process, because this position can change depending on the company's conduct or through community input over time. A local government may challenge the proponent's application and protect its interests while maintaining a neutral position on the outcome. When a local government requests further information from a proponent during the public hearing, the proponent must provide this information.

Local government participation in a hearing crystallizes the key issues which the community decides are non-negotiable. Participation clarifies the conditions that a local government would like the proponent to meet in order to build its project. These conditions may be added to the recommendations that a panel makes to the government or negotiated in a separate agreement with the company, or both.

Local governments will likely increase their participation in public hearings as resource-based industries develop in or near their communities. As a result, local governments can shape the environmental, social, economic, and health conditions that proponents must meet in order to gain approval for their projects. ***Carrie Bavin***

Council Members and Alleged Illegal Expenditures: Orchiston v Formosa

A group of citizens in the City of Powell River (the "City") recently sought a declaration that the Mayor of Powell River and other members of the City Council were disqualified from office and held personally liable for several loans made by Council in contravention of the *Community Charter*. Council acted on incorrect legal advice (from former lawyers) that they could grant the loans without entering into a partnering agreement with the recipient. However, because these loans constituted an assistance to business which is generally prohibited under s. 25 of the *Community Charter*, Council was required to enter into a partnering agreement under s. 21 and publish notice of the loan in compliance with s. 24. The loans had been repaid. In 2013, having realized that these loans were granted in contravention of the statue, Council rescinded the resolutions authorizing the loans and issued a press release explaining what had occurred. The press release also stated that any subsequent loans had been granted after entering into a partnering agreement and giving notice and were therefore in accordance with the *Community Charter*.

Despite the repayment of the loans, a group of citizens sought that the Mayor and Council members were disqualified from holding office until September 2014 and held personally liable for the amounts that had been loaned, pursuant to s. 191 of the *Community Charter*. S. 191(1) states that a council member who votes in favor of a resolution authorizing the use of money contrary to the *Community Charter* is personally liable to the municipality from the amount. S. 191(3) also states that a council member is disqualified from holding local office for three years after the impugned resolution. The only exception listed in the statue is if the council member relies on information from a municipal employee that is

Orchiston v. Formosa (continued from page 14)

dishonest, grossly negligent, or maliciously given. The advice given in this situation did not fall under that exception, it was simply incorrect.

Counsel for Lidstone & Company, on behalf of the Mayor and members of Council, argued that s. 191 was not engaged because the improper loans had been repaid and the issue was therefore moot. They argued that s. 191 concerned the use of municipal funds for purposes outside of the municipal council's authority or jurisdiction, which was not the case in this situation. The loans could have been made if a partnering agreement been entered into. Further they argued that s. 191 should be interpreted to include a defence of good faith and the Mayor and members of Council should not be held liable given their reliance on incorrect legal advice.

The Court agreed. The Honourable Mr. Justice Skolrood found that s. 191(1) is intended to provide a municipality with an avenue of recourse when the money has been spent in contravention of the statue but has not been recovered. It is essentially a form of indemnity. Council will not be held personally responsible if the money is repaid to the municipality. Council's accountability is satisfied when it takes steps to recover funds so as to eliminate any prejudice to the municipality's finances. To hold the Mayor and Councillors liable to the City given that the money had been repaid would transform s. 191(1) into a penalty provision, which the Legislature did not intend. The Court also found that s. 191(3), which provides for disqualification, was not triggered in this situation. 191(3) only applies when councillors are liable to the municipality for funds used in contravention of the statue. This was not the case here, as the funds had already been repaid.

Although this resolved the matter in favor of the Mayor and members of City Council, the Court also agreed with our submission that s. 191 should be interpreted to include a good faith defence. The Court relied on an earlier decision, *Gook Country Estates Ltd v The Corporation of the City of Quesnel et al* 2006 BCSC 1382, which found that a good faith defence existed in a similar provision of the previous *Municipal Act*. Further, the Court found that allowing a council member to escape personal liability when they relied on dishonest or grossly negligent advice but not when they relied on honest but mistaken advice would lead to an absurdity. The Court rejected the petitioner's argument that s. 191 was designed to ensure that council members are held accountable, finding that such an interpretation would only weaken our municipal government structure by serving as a disincentive to individuals who are considering serving their communities by running for municipal office.

Therefore the Court found that there was no valid purpose in granting the relief sought. To do so would have been prejudicial to the citizens of the City. Disqualifying the Mayor and City Councillors would leave only two elected officials, requiring a costly by-election or a request made to the Minister to fill the positions.

The petition was dismissed.

OCP and Zoning Bylaw Amendments Allowed to Create Therapeutic Care Centre: Pettersen v Prince George (City) 2014 BCSC 792

A resident of Prince George ("the City") sought a declaration of invalidity for two bylaws. At issue was the City's proposal to establish a Therapeutic Community Care Facility, intended to assist and house women dealing with addiction and other issues. Council intended to establish the Facility in an area zoned AR2: Rural Residential. The purpose of the AR2 zone under its zoning bylaw ("AR2

OCP and Zoning Bylaw (continued from page 15)

Zoning Bylaw") is to "foster a rural lifestyle and provide for complementary residential related uses that are compatible with the rural character of the area." In order to establish the Facility Council adopted two bylaws. The first amended the Prince George official community plan ("OCP") to ensure consistency of the Zoning Amendment Bylaw with the OCP ("the OCP Amendment Bylaw"). The second bylaw amended the AR2 Zoning bylaw by adding a new permitted use of Community Care Facility, Therapeutic ("the Zoning Amendment Bylaw").

The petitioner argued that the OCP Amendment Bylaw was invalid because it made the OCP internally inconsistent, specifically that the existing rural lifestyle policy statements in the OCP were inconsistent with the location and proposed land use of the Facility. The petitioner also argued that because the OCP Amendment Bylaw contained a site specific policy it effectively became a regulatory bylaw and was therefore invalid. With regard to the Zoning Amendment Bylaw the petitioner argued that it was inconsistent with the AR2 Zoning Bylaw because an institutional use of a Therapeutic Community Care Facility is inconsistent with rural residential use, and that the current AR2 zone only authorizes a maximum residential density of one principle dwelling and one secondary suite. He also argued that it effectively created an illegal unnamed zone by only applying to the property at issue and that it was inconsistent with the OCP.

The City argued that the OCP was not a regulatory bylaw but rather a statement of policies and objectives, and therefore it could permit specific uses on identified parcels. Further, the City argued that the Zoning Amendment Bylaw did not create an unnamed zone, rather it created a use allowed within the AR2 zone and only permitted that use in a single location.

The Court found that the appropriate standard of review for Council's decision was reasonableness. They found that an OCP cannot become a zoning bylaw because it does not commit or authorize a municipality to proceed with any project that is specified in the plan. It does not have any legal effect on a private landowner, whereas a zoning bylaw does. The Court also found that there is no statutory requirement for an OCP to be internally consistent. The Court stated than an OCP is "not meant to be a static document but rather is fluid and develops over time." They found that the OCP Amendment Bylaw was therefore valid.

The next issue was whether the Zoning Amendment Bylaw was consistent with the current AR2 Zoning Bylaw. The Court found that the established density of the Facility proposed by the Zoning Amendment Bylaw did not offend the AR2 Zoning Bylaw. The Court also found that the new principal use created by the Zoning Amendment Bylaw was not inconsistent with the AR2 Zoning Bylaw, as special needs housing is a necessity in both urban and rural areas. The ultimate issue for the Court was whether the Zoning Amendment Bylaw was consistent with the OCP, as amended by the OCP Amendment Bylaw. The Court found that it was, as it furthered the objective of providing special needs housing in rural areas. While the petitioner argued that it was inconsistent with a different policy in the OCP that sought to limit development and provide low intensity residential use, the Court stated that each policy in the OCP is "an objective or goal of the Council." It is therefore not possible to promote each of the objectives stated in an OCP equally in a single instance. The Court found that the Facility was an "inevitable progression in an ever changing community" and upheld both bylaws. ***Claire Hildebrand***

City Bylaws Prohibiting Parking and Repair of Heavy Vehicles Enforced: Prince George (City) v Christenson 2014 BCSC 329

The City of Prince George ("the City") sought to enforce its bylaws and stop the defendant from parking trucks on his property and operating his trucking business in a certain manner. The current City bylaws dictated that a landowner could not have up to four vehicles on their property. Vehicles over 5,500 kilograms ("heavy vehicles") could be parked longer than three hours between 8 am and 10 pm on the same day, and no heavy vehicles could be parked between 10 pm and 9 pm the next day. The City sought an injunction to prohibit the defendant from parking and repairing heavy vehicles on his property.

Various bylaw enforcement officers for the City testified that on different days from 2011 – 2013 they had observed from 1 – 7 heavy vehicles parked on the defendant's property. One officer had spoken to the defendant and informed him that he was not allowed to park or perform maintenance on heavy vehicles on his property. The landowner continued to park and repair heavy vehicles on his property.

The defendant claimed that he had been informed by the City that his property had been "grandfathered" and therefore he was allowed to park and repair heavy vehicles on his property. He testified that in 1986 he had spoken to an unidentified female bylaw officer who had told him his property was subject to a "grandfather clause" and therefore he could use it to park and repair heavy vehicles. He also argued that if he had contravened the bylaw, he had a defence of verbal license or equitable estoppel. He asserted that the fact that he was told by the City that his property was grandfathered and then was not prosecuted for bylaw violation for 23 years was evidence that this grandfather clause existed.

The Court found that the applicable bylaws going back to 1980 did not allow the parking and repair of heavy vehicles on the defendant's property and that the defendant's evidence of being informed he was grandfathered was improbable. Generally, the Court found his evidence vague and not credible. On the issue of the defences he raised, the Court reiterated the statements in *Corporation of the Township of Esquimalt v Crosson* 2010 BCSC 1490, where the Court held that as a general rule, municipal rights and powers are of a public nature and cannot be waived or lost through acquiescence, and that the doctrine of estoppels cannot interfere with the enforcement of the provisions of an Act of Parliament. The Court found that the defences had failed and that the defendant had contravened the bylaw.

The Court granted several injunctions in the City's favour, ordering the defendant to cease the repair and parking of heavy vehicles on his property. The Court also ordered that he removed any offending vehicles from his property. If he failed to do so the Court authorized the City to enter the defendant's property to remove the vehicles at the cost of the defendant. ***Claire Hildebrand***

Lake Country (District) v Kelowna Ogopogo Radio Controllers Association 2014 BCCA 189

This case was an appeal from a decision of the British Columbia Supreme Court ("BCSC") (*Lake Country (District) v. Kelowna Ogopogo Radio Controllers Association,* 2013 BCSC 1971) where the Court held that the Kelowna Ogopogo Radio Controllers Association ("the Association") was not permitted to fly their model airplanes on land located in the Agricultural Land Reserve ("ALR"). The Association leased a small portion of a farm and used it as an unpaved airstrip for flying radio

Kelowna Ogopogo Radio (continued from page 17)

or wifi controlled aircraft weighing less than 35 kilograms.

The land on which the Association operates lies within the ALR and so is subject to the *Agricultural Land Commission Act* ("the *Act*") and the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* ("the *Regulations*"), which allow land to be used for a range of activities that are closely related to farm use. Under the *Regulations,* one of the land uses permitted within the ALR is: "unpaved airstrip or helipad for use of an aircraft flying non-scheduled flights." Additionally, a District bylaw ("the Bylaw") zoned the land as A1 Agricultural and permitted the use of an "unpaved airstrip and heli pad." The Bylaw set out both permitted principal uses and secondary uses. The use of an "unpaved airstrip and heli pad" is a permitted secondary use. However the District argued that when viewed in the broader legislative scheme and the ALR legislation, this was specific to use of an unpaved airstrip or heli pad for agricultural uses, and therefore the Bylaw did not permit the Association's use of the land.

The BCSC agreed with the District. They found that the purpose of the Bylaw is to provide a zone for agricultural uses and other complimentary uses. This is consistent with the purpose of the *Act* and the *Regulation*, which is to preserve agricultural land for farm use and related activities, and encourage the use of agricultural land for farming. Therefore, the words "unpaved airstrip and helipad" must be interpreted as being intended to aid in farm use or a use complementary to farming. The Association's use of model aircraft did not fit into this interpretation and was therefore prohibited under the Bylaw.

This finding was recently overturned by the Court of Appeal. The Court of Appeal reasoned that on the plain words of the Bylaw, the Club's use of the property as an unpaved airstrip was a permitted use. The issue was whether the broader legislature content, which arises from the fact that the property lies in the ALR, demonstrates an intent to limit the use of the airstrip to activities related to agriculture. The Association argued that the BCSC mischaracterized the purpose set out in the Bylaw, stating that it provides for agricultural uses and "uses complementary to agriculture", when in fact the provision is framed more broadly, referring to "agricultural uses as well as other complementary uses suitable to an agricultural setting". The Association also argued that the Bylaw provided for many activities that were not agricultural uses or complementary uses, such as weddings and barn dances. The Association asserted that under the Bylaw, a secondary use is only required to be done in conjunction with a principal use, and that a secondary use does not require the same degree of direct association with agricultural activity. The Association submitted that its use of the property operated in conjunction with the primary use of the land as a farm, arguing that the lease allowed the farmer to retain pasture and cropping rights of the property.

The Court of Appeal overturned the BCSC's decision and found that the Association's use of land did not contravene the Bylaw. It found that the principal use of the land remained farming and that the Association's use of land as an unpaved airstrip and heli pad pursuant to the Bylaw was a complementary use suitable to the agricultural setting. ***Claire Hildebrand***

Noise and Animal Bylaws: North Cowichan (District) v. Bradshaw, 2013 BCSC 2384

This was a petition brought by North Cowichan to enforce two of its bylaws through an injunction under s. 274 of the *Community Charter*. The first bylaw North Cowichan sought to enforce was its

Noise and Animal Bylaws (continued from page 18)

animal control bylaw that prohibits keeping dogs without a kennel license and mandates that all dogs within the municipality are individually licensed. The District also sought to enforce its noise control bylaw, which prohibits keeping animals that disturb the peace.

During a period from early 2008 until July 2013, Barry and Janice Bradshaw kept dogs on their property. North Cowichan alleged that they kept more than three dogs, which required a kennel permit, and that none of these dogs were individually licensed. During that time, many complaints were made by neighbours that the dogs were barking and howling frequently, often for extended periods of time and at all hours of the day and night. The District was notified of many of these complaints and took reasonable steps to alert the Bradshaws and ask that the remedy the problem. The Bradshaws did make some attempts to control the noise that were occasionally successful.

The Bradshaws argued that because the dogs were kept to protect their farm from water fowl and other predators, this dispute should be exclusively governed by the Farm Industry Review Board ("the Board") pursuant to the *Farm Practices Protection (Right to Farm) Act*. They maintained that this use of dogs constituted a "normal farm practice" which could not be prevented by the municipality's bylaws. In response to this claim, one of the Bradshaw's neighbours made a complaint to the Board. An officer of the Board issued a statement that the Board did not have jurisdiction to decide this issue. This statement was submitted into evidence by North Cowichan.

The court found that the Bradshaws had violated North Cowichan's noise bylaw and that the dogs kept on the property would continue to make excessive noise until an injunction was granted to prevent further contravention of the noise bylaw. Therefore, under s. 274(1) of the Community Charter, the court ordered that the respondents be restrained from harbouring any dog that disturbs the peace of its neighbours with frequent barking.

The Court found that there was insufficient evidence to conclude that the Bradshaws had violated the petitioners' animal control bylaws. The court found that the affidavit evidence of an animal control officer was insufficient, and that North Cowichan should have used the animal licensing records as evidence on the issue of whether the respondents had ever obtained a kennel license or licensed their individual dogs. Therefore the injunction granted by the Court is only to enforce the petitioners' noise control bylaw, and not to enforce its animal control bylaws. ***Claire Hildebrand***

District found Liable for Negligent Misrepresentation: 0731989 BC Ltd v. District of Hope, 2013 BCSC 2315

In this case there was a water leak close to the plaintiff's mobile home park located in the District of Hope. The District was notified and their utility foreman was sent to inspect the site and make repairs. The repairs were not effective, at which point the foreman testified that he concluded that that the water leak was caused by a natural fissure spring and was not a leak from the District's water system.

The leak increased in size and caused the water bills for the plaintiff's property to increase dramatically and the water pressure in the units to decrease. The plaintiff continued to raise these matters with the District and was continually advised that the leak was from a natural spring and the increases in water bills were coincidental. The District's foreman told the plaintiff that the

District Found Liable (continued from page 19)

issues were likely caused by a leak in the plaintiff's own water system. Based on this information, the plaintiff undertook the replacement of all of the water lines at his mobile home park.

The true source of the leak was identified when the plaintiff went to connect the new water lines to the water meter. In order to do this it was first necessary to turn off the water from the municipal system. The leak immediately dried up.
Following this discovery, the plaintiff sought to be reimbursed for the various amounts he had expended because of the false information he received from the District about the source of the leak. The District agreed to compensate the plaintiff for additional water compensation but denied all other compensation. The plaintiff sued in negligence and negligent misrepresentation.

The court found that the utilities foreman knew that the leak was somehow connected to the District's system, although he did not take any further measures to determine the precise source of the leak. Therefore, the District's foreman knowingly made a false statement about the source of the leak when the plaintiff inquired about it. The plaintiff relied on this false evidence to his detriment.

The court found that the District had a duty to investigate the matter further given its knowledge that the leak was probably in the District's system. The court found the District liable in both negligence and negligent misrepresentation. The plaintiff was entitled to recover damages for the amounts it actually expended as a result of the District's negligence, but was not entitled to recover general damages as a result of dealing with this inconvenience or the estimated costs of proposed repairs to property damaged by the leak that had not been carried out. The damages awarded include compensation for extra water charges, the cost of hiring an underground leak detection company, and the replacing of its water lines, totalling $26,164.30. The plaintiff was also entitled to costs. ***Claire Hildebrand***

Lidstone & Company

Lidstone & Company is a local government law firm that acts primarily for municipalities and regional districts. The firm also acts for entities that serve special local government purposes, including local government associations, and local government authorities, boards, commissions, corporations, societies, or agencies, including police forces and library boards.

Lidstone & Company has been selected by the Municipal Insurance Association of British Columbia to be the provider of its Casual Legal Services available to MIABC Casual Legal Services subscribers.

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 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.

Lidstone & Company (continued from page 20)

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.

Rob Botterell focuses on major project negotiations for local governments (such as in relation to pipelines, LNG, dams and reservoirs, mines, oil and gas, and similar matters). He also deals with law drafting as well as local government matters in relation to aboriginal and resource law. Rob will also conduct lobbying on behalf of local governments. Rob led a team that put together the *Freedom of Information and Protection of Privacy* legislation and advised on the *Personal Property Security Act* and others. He negotiated the key provisions of the Maa-nulth Treaty for Huu-ay-aht, has drafted over 500 pages of laws, and has negotiated with all levels of government and industry on major projects. He was a Trustee of the Islands Trust and in 2012 chaired a panel at the UBCM annual convention on "Voting on the Internet". Rob has an LL.B. from UVic and MBA from UBC, and is a Fellow of Institute of Canadian Bankers after having been the TD Bank Regional Comptroller in the 1980's. Rob has practiced law in British Columbia for 20 years.

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.

Lidstone & Company (continued from page 21)

Sara Dubinsky 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 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 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 labour and employment, 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.

Carrie Bavin handles legal research and writing, opinions, and administrative tribunal and environmental matters. Carrie graduated from the University of Victoria Faculty of Law in the spring of 2013, and commenced the Professional Legal Training Course shortly thereafter. Carrie was selected as a top applicant from her first year law class for a fellowship to generate research reports on debt regulation. Carrie's legal academic paper on the legal consequences of failing to regionalize BC's police forces was nominated for a law faculty writing award. Carrie has received numerous other awards throughout her academic career.

Robin Dean is an articled student. Robin studied law at University of British Columbia and University of Washington, and served as a judicial law clerk at the Washington State Court of Appeals. While in law school Robin was Editor of the Pacific Rim Law & Policy Journal. Before beginning her path to a career in the law, Robin served as an art gallery and museum curator.