LIDSTONE & COMPANY

# Law Letter

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## *BC Court of Appeal Upholds Judgment in GVRD v. Township of Langley*

On December 24 2014, the BC Court of Appeal issued Reasons for Judgment in *Greater Vancouver Regional District v. Township of Langley and Peter Wall* (2014 BCCA 512) and *Greater Vancouver Regional District v. Township of Langley and Alan Hendricks* (2014 BCCA 511). Both cases arose from a dispute between the regional district and its member municipality, Township of Langley, about the legal effect of the Township's regional context statement. Both on judicial review and on appeal, the Courts dismissed the GVRD's challenges to Township bylaws.

The GVRD had asked the courts to quash Township official community plan (OCP) bylaw amendments on the basis that they were inconsistent with the Township's regional context statement (RCS).

Regional context statements build a bridge between regional growth strategies (RGS), created

by regional districts, and OCPs, created by municipalities. A municipality that has an OCP must include in the OCP a regional context statement that identifies the relationship between the official community plan and some designated matters in the regional growth strategy. The regional context statement must also state how the OCP and the RGS will be made consistent over time (*Local Government Act* s. 866(2)). The RCS must be accepted by the regional district before becoming a part of the municipality's OCP. A regional context statement and the rest of the official community plan must be consistent (*Local Government Act* s. 866(3)).

In these cases the Township regional context statement stated that the OCP protects an area called the Green Zone by doing several things, including:

"setting minimum lot sizes to preserve a land base for agricultural production (Sections 5.5 and 5.6)"

**Regional Growth Strategies (continued from page 1)**

The references to section 5.5 and 5.6 are to sections of the OCP that set minimum lot sizes. The impugned OCP bylaw amendments reduced those minimum lots sizes for certain lands. The GVRD argued that those minimum lot sizes were incorporated by reference to the RCS, and therefore could not be amended by the Township without the consent of the GVRD. Both on judicial review and on appeal, the courts disagreed with the GVRD.

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The Court of Appeal held that the reference in the RCS to minimum lots sizes set out in the OCP were simply examples of minimum lot sizes, and were not incorporated as a minimum that could not be altered without regional district approval. The Court of Appeal said:

"It cannot be said (nor is it suggested) that all of the bracketed sections to which reference is made in the context statement are incorporated therein. Were it to be otherwise, the township would, for example, be precluded from altering any of what are ten enumerated measures identified to protect the environment, or what are eight identified to strengthen the agricultural economy, without seeking the regional district's approval. No amendment could be made, whether to reduce the enumerated measures or even to increase them. That cannot have been intended. The regional district maintains those measures that are "hard-edged" – like stated minimum lot sizes – are an exception, but it is less than clear why that should be so."

Moreover, the Township's regional context statement stated that minimum lot sizes were set in the OCP to "preserve a land base for agricultural production". In both cases the Agricultural Land Commission had provided extensive review of the lands at issue, and had determined that they were not suitable for agriculture or that agriculture would be enhanced by the measures facilitated by the reduced minimum lot sizes. The Court of Appeal held:

"Thus, even if s. 5.5.3 of the rural plan were said to be incorporated in the context statement, the amendment would not appear to alter any minimum lot size set to preserve land for agricultural production such that there would be no inconsistency in any event."

The Court of Appeal judgments are brief in their analysis upholding the chamber's judgment on judicial review, but as the Court of Appeal notes:

"The judge undertook an extensive outline of land use planning in this province, distinguishing the roles of regional and local governments and the coordination necessitated by land being subject to both a region's growth strategy and a municipality's community plan as in this instance."

**Regional Growth Strategies (continued from page 2)**

The judgment of the BC Supreme Court can be found at the BC Courts website under citation 2014 BCSC 414 for readers interested in the court's thorough description of the relationship between regional districts and member municipalities when it comes to land use planning in B.C.

***Maegen Giltrow***

## *The Challenges of the Freeman on the Land Movement*

The Freeman on the Land (also referred to as "Freemen", "Sovereign Citizens", "Natural Persons" and "Detaxers") is an anti-government ideological movement that is growing in western Canada and presents particular challenges to local government. The Freeman movement is not to be confused with the Freeman award that is bestowed upon exceptional local citizens by some municipalities.

Local governments will most likely encounter these individuals through bylaw enforcement procedures or through unprovoked "paper attacks" as one lawyer has coined.[1] The movement can attract both men and women – among others, we have local government clients who have interacted with a Freeman couple involving a husband and wife.

In *Meads v. Meads*, 2012 ABQB 571, Associate Chief Justice Rooke explained this loosely-organized movement who he refers to as a whole as "Organized Pseudo Legal Commercial Argument litigants" ("OPCA") as follows:

"Stated simply, Freeman-on-the-Land believe they can 'opt out' of societal obligations and do as they like. A common theme in Freeman arguments is that state and court action requires the target's consent. Alarmingly, certain members of the Freeman-on-the-Land movement believe they have an unrestricted right to possess and use firearms. That has led in at least one instance to a Freeman-on-the-Land being found with a concealed unauthorized handgun; that Freeman-on-the-Land threatened to use the weapon on law enforcement personnel. In that, and many other ways, the Freemen-on-the-Land parallel the American Sovereign Man community. They both engage in a broad range of OPCA activities directed toward almost any government or social obligation.

Both habitually use 'fee schedules', and advance claims and liens against state, police, and court actors. Many apply the 'everything is a contract' approach and so are extremely uncooperative, in and out of court" (paragraph 174, case citations removed).

As part of their anti-government stance, Freemen will refuse to obtain business permits, pay parking tickets, utilities, or property taxes and generally disobey bylaws. Justin Bourque, the man who killed three

[1] Bilinsky, Dave. "The Freeman on the Land Movement" Law Society of BC Bencher's Bulletin, 2012 No. 4 Winter: online http://www.lawsociety.bc.ca/page.cfm?cid=2627 .

**Challenges of Freeman (continued from page 3)**

RCMP officers in Moncton, NB, was reported to have been partly influenced by this movement. Freemen will "employ a collection of techniques and arguments promoted and sold by 'gurus'…to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations, and individuals" (Meads).

Part of the Freeman's technique involves sending documents to government offices which contain references to the Uniform Commercial Code (US commercial legislation), Magna Carta, and other legalese intended to intimidate the recipient into thinking the document is legitimate. They may name public officials in these documents and claim they are filling a lawsuit against certain individuals.

It is important to understand that these documents have no legal basis and there is usually no requirement to respond. Launching a written response will likely prove to be a futile waste of time given the individual's anti-government views. If a local government becomes aware that a particular citizen has Freeman beliefs or is using these tactics, then staff should be alert and cautious when dealing with the individual. Local police may need to be notified and called in for support in the bylaw enforcement context.

For more information on how to tell if you're dealing with a Freeman, visit: http://www.rcmp-grc.gc.ca/gazette/vol76no1/cover-dossier/freeman-eng.htm.

***Carrie Moffatt***

## *Implications of the New Protection of Communities and Exploited Persons Act*

The new *Protection of Communities and Exploited Persons Act* received Royal Assent on November 6, 2014 and came into force on December 6, 2014. This Act amends the Criminal Code in response to a recent Supreme Court of Canada decision which ruled that a number of prostitution-related offences were unconstitutional (*Canada (Attorney General) v. Bedford,* 2013 SCC 72). Amongst other things, the new legislation creates an offence that prohibits the advertisement of sexual services offered for sale. This is the first time that advertising the sale of sexual services has been criminalized in Canada.

The new advertising offence, contained in s. 286.4 of the *Criminal Code*, criminalizes knowingly advertising an offer to provide sexual services for consideration. This offence imposes maximum penalties of 5 years imprisonment where prosecuted by indictment and 18 months where prosecuted by summary conviction:

***Advertising sexual services***

**Section 286.4** Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of

(*a*) an indictable offence and liable to imprisonment for a term of not more than five years; or

(*b*) an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months.

However, anyone who advertises their own sexual services is expressly excluded from the ambit of this offence:

***Immunity — material benefit and advertising***

**Section 286.5** (1) No person shall be prosecuted for an offence under section 286.4 in relation to the advertisement of their own sexual services.

***Immunity — aiding, abetting, etc.*** (2) No person shall be prosecuted for aiding, abetting, conspiring or attempting to commit an offence under any of sections 286.1 to 286.4 or being an accessory after the fact or counselling a person to be a party to such an offence, if the offence relates to the offering or provision of their own sexual services.

According to the Department of Justice's Technical

**Implications of the New Protection of Communities (continued from page 4)**

Paper on the new legislation, the advertising offence in s. 286.4 targets those who place or post ads in media or on the internet, such that publishers or website administrators could be held criminally liable as parties if they know both of the existence of the advertisement of sexual services for money or other consideration, and that the advertisement is in fact for the sale of sexual services for money or other consideration. The second element of the offence may prove difficult to establish, as often these advertisements on their face are not for sexual services, but rather some form of companionship or massage. As with all Criminal Code offences, the burden of proof is beyond a reasonable doubt.

We are aware of the suggestion that local governments could be liable as a result of these new provisions, by virtue of allowing publications which contain advertisements for sexual services to be displayed or sold within their premises.

We do not think that permitting a publication such as a newspaper or magazine that contains these advertisements in locations like the municipal hall or municipal or regional libraries in and of itself exposes local government to liability for contravening the new Criminal Code provisions.

In 2011 the Supreme Court of Canada issued its judgment in *Crookes v. Newton*, a case which turned on the issue of whether hyperlinking to defamatory content in and of itself constitutes publication of that content (thus exposing the hyperlinker to liability for defamation). The Majority of the Court ruled that a hyperlink, by itself, should never be seen as "publication" of the content to which it refers. The creator or poster of the defamatory words is the person who is publishing them, while the person who creates the hyperlink is not publishing the defamation unless he or she goes beyond hyperlinking and actually repeats the defamatory content.

We think that allowing publications containing prohibited advertisements to be available in government premises is analogous to hyperlinking to a secondary source that contains defamatory content. In both contexts there is no control over the content created by its originator.

For further information, see the Department of Justice's **Technical Paper: Bill C-36, *Protection of Communities and Exploited Persons Act***, available online at http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html

***Sara Dubinsky***

## *Key Differences between Unionized and Non-Unionized Employees*

There are numerous differences between unionized and non-unionized employees. In light of the fact that most local governments are dealing with both types, we have provided a summary of three key differences between unionized and non-unionized employees.

(1) Unionized employees can only be terminated in limited circumstances.

In the absence of express terms to the contrary, it is an implied term of every employment contract that an employer can dismiss a non-unionized employee without cause, at any time, by providing reasonable notice of termination. Notice can be provided in the form of working notice or by providing compensation for what the employee would have been entitled to during the reasonable notice period. This is not the case with non-unionized employees. Unionized employees have far greater job security and can only be terminated for cause and in other limited circumstances, such as for non-culpable absenteeism. You cannot simply provide reasonable notice and terminate a unionized

**Key Differences Between Unionized and Non-Unionized Employees (continued from page 5)**

employee because you think he or she is not doing a good job.

(2) Employers cannot enter into individual agreements with unionized employees, except in limited circumstances

Non-unionized employees have a direct contractual relationship with the employer, and the employer and non-unionized employee

negotiate directly in relation to the terms and conditions of employment. On the other hand, unionized employees have a relationship with the employer through the union, the terms and conditions of which are contained in the collective agreement. Therefore, as a rule, private agreements and individual contracts between an employer and a unionized employee are not possible. The only scope for bargaining with individual employees is in limited circumstances, including, for example, where such bargaining is sanctioned by the collective agreement (which is rare) or where the terms being negotiated fall outside the scope of the agreement. An example of the latter might include an offer of early retirement, depending on the collective agreement in question. Even in cases where it might be arguable that an employer is permitted to negotiate a particular type of agreement with a unionized employee, we generally recommend seeking the consent of the union.

(3) Unionized employees cannot sue the employer

Following on the point above, given that unionized employees only have a relationship with the employer through the union, unionized employees cannot directly sue the employer for alleged breaches of the collective agreement. Issues in the unionized workplace are resolved through the union by way of the grievance and arbitration procedures in the collective agreement. If a union decides not to pursue an employee's grievance, the employee's recourse is to file a complaint against the union on the basis that the union is breaching its duty of fair representation. Non-unionized employees, on the other hand, can directly sue their employers in relation to alleged breaches of the employment contract, including constructive dismissal or wrongful dismissal.

There may be exceptions to this rule in the case of human rights complaints, unless the unionized employee has already sought recourse for a human rights complaint through the grievance procedures. In such cases, a human rights tribunal may dismiss a complaint on the basis that it has already been adequately dealt with in another proceeding (as provided for in s. 27(1)(f) of B.C.'s *Human Rights Code,* for example).

There are numerous other differences between unionized and non-unionized employees, the discussion of which is left for another edition.

***Marisa Cruickshank***

## *Personal Liability for Unlawful Expenditures*

Section 191 of the *Community Charter* sets out the legal consequences where a council member has voted for a bylaw or resolution authorizing the expenditure, investment or use of money contrary to the *Community Charter* or the *Local Government Act.* This applies to a regional board director under section 814 of the *Local Government Act.*

This section applies to votes on expenditures that are contrary to a financial plan, the use of borrowed funds for purposes not authorized or approved under the original borrowing process, making agreements contrary to the statute, use of reserve funds contrary to the statute, investing funds contrary to the permitted list of

**Personal Liability for Unlawful Expenditures (continued from page 6)**

investments, and other money matters that are prohibited by or contrary to the statute.

(1) Section 191(3) provides that in addition to any other penalty to which the person may be liable, a council member who is liable to the municipality under subsection (1) is disqualified from holding office until four years from the date of the vote.

Money owed to a municipality section 191 may be recovered for the municipality by the municipality, an elector or taxpayer of the municipality, or a person who holds a security under a borrowing made by the municipality.

Provisions of statutes imposing personal liability on Council members must be strictly construed: *Gook Country Estates Ltd. v. the Corporation of the City of Quesnel 2006 BCSC 1382* (affirmed British Columbia Court of Appeal). Nonetheless, if there is an illegal expenditure, then section 191 applies.

In a recent case where the court exonerated the Powell River council members was *Orchiston v. Formosa 2014 BCSC 1080*. In that case Mr. Justice Skolrood stated at paragraph 21:

"In my view, properly construed... section 191 (1) is intended to provide a municipality, and its taxpayers, with a measure of security in the event that municipal councillors spend public money in a manner that is not authorized by statute where that money is not recovered. It is, in effect, a form of indemnity; the councillors are personally liable for the amounts improperly paid while the funds remain outstanding..."

A member of Council may establish a good defence if there is evidence that the Council member who voted on the illegal expenditure relied upon information provided by a municipal officer or employee who is guilty of dishonesty, gross negligence or malicious or wilful misconduct in relation to the provision of the information [section 191(2)]. There is also a common law good faith defence where the Council member relies upon the advice of a municipal

solicitor who has expertise in respect of the subject matter (*Orchiston*, at paragraph 59).

Despite the absence of a reference to officers or employees being liable under section 191 of the *Community Charter*, nonetheless an action may be brought against a municipal officer or employee in relation to an illegal expenditure. The principal defence is found in section 287 of the *Local Government Act* which provides that no action for damages lies or may be instituted against a municipal officer or employee for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty, or the exercise of the person's

**Personal Liability for Unlawful Expenditures (continued from page 7)**

power, for any alleged neglect or default in the performance or intended performance of that person's duty or exercise of that person's power. However, this does not provide a defense if the officer or employee has, in relation to the conduct, been guilty of dishonesty, gross negligence or malicious or willful misconduct.

These are two additional defences for officers and employees. First, section 287.1 of the *Local Government Act* provides that it is a good defence to any action brought against the local government finance officer for unlawful expenditure of local government funds if it is proved that the individual gave a written and signed warning to the Council that, in his or her opinion, the expenditure would be unlawful. As well, the defence of good faith applies if the officer or employee has relied upon a legal opinion of a municipal law expert (*Orchiston*, at paragraph 59).

Despite these defences, it is clear to elected officials, officers and employees that before Council members vote on a financial matter, including a transfer or borrowing from a reserve fund, staff ought to provide Council with a staff report setting out the grounds for the validity of the expenditure or other financial measure.

***Don Lidstone***

## *Honesty Really is the Best Policy - The Supreme Court of Canada's decision in Bhasin v. Hrynew*

### *Introduction*

In the recent judgment of the Supreme Court of Canada (the "SCC") in *Bhasin v. Hrynew*[2], the SCC has recognized good faith contractual performance as a general organizing principle of the Canadian common law of contract. The SCC's judgment in *Bhasin v. Hrynew* has implications for all local governments in circumstances where the local government enters into a contract with another party. These circumstances arise quite frequently by virtue of the contract making authority granted local governments under the *Community Charter* and *Local Government Act.*

Municipal governments are granted authority to enter into contracts by virtue of the powers granted them under the *Community Charter.* Under s. 8(1) of the *Community Charter,* municipal governments are provided with the "capacity, rights, powers and privileges of a natural person of full capacity". These powers include the right to enter into contracts with respect to any matter of municipal government responsibility including those purposes detailed in s. 7 of the *Community Charter:* "(a) providing for good government of its community, (b) providing for services, laws and other matters for community benefit, (c) providing for stewardship of the public assets of its community, and (d) fostering the economic, social and environmental well-being of its community."

Regional Districts are also granted authority to enter into agreements under s. 176 of the *Local Government Act.* Subsection 176(1)(a) empowers regional districts to make agreements respecting the regional district's services, including agreements respecting the undertaking, provision and operation of those services, operation and

enforcement in relation to the regional district board's exercise of its regulatory authority, and the management of property or an interest in property held by the regional district. Similarly, regional districts are granted authority under subsection 176(1)(b) to make agreements with a public authority respecting activities, works or services within the powers of a party to the agreement, other than the exercise of regulatory

[2] , (2014) SCC 71.

**Honesty Really is the Best Policy (continued from page 8)**

authority, operation and enforcement in relation to the exercise of regulatory authority within the powers of a party to the agreement, and the management of property or an interest in property held by a party to the agreement.

***Contract Law and the duty of good faith***

A contract is "an oral or written agreement between two or more parties which is enforceable by law."[3] In order to be valid, a contract requires an offer, acceptance of that offer and "consideration" which entails money or something of value, such as a rights, interest, profit or benefit, accruing to one or more parties to the contract. The law governing contracts has for the most part been established by the "common law" or judge-made law made on the basis of historical legal precedents developed in legal cases over hundreds of years. Until the SCC's decision in *Bhasin v. Hrynew*, the Canadian common law in relation to good faith performance of contracts was piecemeal, unsettled and unclear. As Cromwell J. noted for a unanimous SCC:

"The notion of good faith has deep roots in contract law and permeates many of its rules. Nonetheless, Anglo-Canadian common law has resisted acknowledging any generalized and independent doctrine of good faith performance of contracts. The result is an "unsettled and incoherent body of law" that has developed "piecemeal" and which is "difficult to analyze"… This approach is out of step with the civil law of Quebec and most jurisdictions in the United States and produces results that are not consistent with the reasonable expectations of commercial parties."[4]

This "unsettled and incoherent body of law" recognized good faith obligations in certain circumstances including employment contracts, insurance claims and in the tendering context; however, good faith and honesty requirements were not consistently imposed by Canadian courts in other circumstances and where they were, it was often unclear whether the good faith obligation was imposed as a matter of law, as a matter of implication or as a matter of contract interpretation.[5] The SCC has sought to address these issues in *Bhasin v. Hrynew.*

***Bhasin v. Hrynew* Background**

The background facts in *Bhasin v. Hrynew* concerned a lawsuit by the plaintiff, Bhasin & Associates ("Bhasin"), against Canadian American Financial Corp. ("Can-Am") and Mr. Hrynew ("Hrynew") based on Can-Am's decision to terminate its contract with Bhasin. In brief terms, Can-Am marketed education savings plans to investors through retail dealers, known as enrollment directors, of which Bhasin was one and Hrynew was another and a competitor of Bhasin. Hrynew wanted to capture Bhasin's lucrative niche market and approached Bhasin on numerous occasions to propose a merger of their agencies. Hrynew also actively encouraged Can-Am to force the merger. Bhasin rejected these overtures. Subsequently, Can-Am appointed Hrynew as its "provincial trading officer" to review its enrollment directors for compliance with Alberta securities laws. In this role, Hrynew was required to conduct audits of Can-Am's enrollment directors, including Bhasin; however, Bhasin

objected to having Hrynew, a business competitor, review his confidential business records.

The evidence established in court made it clear that Can-Am was considering a restructuring of its agencies in Alberta whereby Bhasin would be working for Herne's agency. None of this was

[3] *Canadian Law Dictionary.*
[4] See note i at para. 32.
[55] Para. 48.

**Honesty Really is the Best Policy (continued from page 9)**

disclosed by Can-Am to Bhasin and Can-Am repeatedly misled Bhasin by telling him that Hrynew, as Can-Am's appointed provincial trading officer, was under an obligation to treat the information obtained from its review of Bhasin's records confidentially. Can-Am also responded equivocally when Bhasin asked whether the merger was a "done deal". When Bhasin continued to refuse to allow Hrynew to audit his records, Can-Am threatened to terminate its agreement with Bhasin and eventually gave notice of non-renewal under the agreement. At the expiry of the contract term, Bhasin lost the value in his business in his assembled workforce and the majority of his sales agents were successfully solicited by Hrynew' s agency.

As a result of these circumstances, Bhasin subsequently sued Can-Am and Hrynew. The trial judge found Can-Am was in breach of the implied term of good faith, Hrynew had intentionally induced breach of contract, and both Can-Am and Hrynew were liable for civil conspiracy. On appeal, the Court of Appeal allowed the appeal and dismissed Bhasin's lawsuit. On appeal to the SCC, the SCC allowed the appeal against Can-Am and restored the trial judgment.

***Principles Established***

On the key issue considered by the SCC in *Bhasin v. Hrynew,* the SCC confirmed that the Canadian common law imposes a duty on parties to perform their contractual obligations honestly. In recognizing this duty, the SCC established two "incremental steps" in the Canadian common law with respect to good faith performance of contracts which, in the SCC's view, make the common law more coherent and more just. The first step is to recognize good faith contractual performance as a general organizing principle of the common law of contract and as a foundation for the various rules, situations and types of relationships that may arise in contracts. The second step is to recognize a duty by all parties to a contract to act honestly in the performance of contractual obligations.

Recognizing good faith contractual performance as a general organizing principle, the SCC establishes good faith as an organizing principle "that underlies and manifests itself in various more specific doctrines governing contractual performance. That organizing principle is simply that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily."[6] As the SCC explained, an organizing principle is not a "free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations."[7]

In practical terms, good faith means having "appropriate regard" to the legitimate contractual interests of the other parties to the contract and not seeking to undermine those interests in bad faith. "Appropriate regard" will vary depending on the context of the contractual relationship; however, it is different from the much higher obligations of a fiduciary and does not require a party to put the interests of the other contract parties first.[8] The principle of good faith manifests itself by requiring "honest, candid, forthright or reasonable contractual performance."[9] This principle of good faith is flexible having regard to the nature of the contractual relationship.[10] The SCC also made it clear that good faith must be

applied in a manner that is consistent with the freedom of contracting parties to pursue their individual self-interest. As Cromwell J. explains:

**Honesty Really is the Best Policy (continued on page 11)**

[6] Para. 64.
[7] *Ibid.*
[8] Para. 65.
[9] Para. 66.
[10] Para. 69.

**Honesty Really is the Best Policy (continued from page 10)**

"in commerce, a party may sometimes cause loss to another — even intentionally — in the legitimate pursuit of economic self-interest... Doing so is not necessarily contrary to good faith and in some cases has actually been encouraged by the courts on the basis of economic efficiency… The development of the principle of good faith must be clear not to veer into a form of *ad hoc* judicial moralism or "palm tree" justice. In particular, the organizing principle of good faith should not be used as a pretext for scrutinizing the motives of contracting parties."[11]

The second incremental step established by the SCC in *Bhasin v. Hrynew* is the establishment of a duty of honesty in contractual relations. The SCC defines this duty in straight-forward terms as follows:

"…there is a general duty of honesty in contractual performance. This means simply that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract. This does not impose a duty of loyalty or of disclosure or require a party to forego advantages flowing from the contract; it is a simple requirement not to lie or mislead the other party about one's contractual performance."[12]

The SCC recognizes this duty as a minimum standard that operates irrespective of the intentions of the parties.[13] Similar to the general organizing principle of good faith, the duty of honesty "will vary with context and the parties should be free in some contexts to relax the requirements of the doctrine so long as they respect its minimum core requirements."[14].

Parties to a contract may, by agreement, determine the standard by which good faith and honestly are to be measured provided that standard is not unreasonable[15].

**Application to Local Governments**

The SCC decision in *Bhasin v. Hrynew* has a number of implications for local governments with respect to contracts.

- *Negotiations: Honesty in contract negotiations.* In most circumstances, local governments need not provide full disclosure of their bargaining position to other parties to the contract; however, they must not actively mislead or deceive parties about matters

[11] Para. 70.
[12] Para. 73.
[13] Para. 74.
[14] Para. 77.

[15] Para. 77.

**Honesty Really is the Best Policy (continued from page 11)**

directly linked to the key terms of the contract.

- *Contract drafting: Specific standards of good faith outlined in contracts.* The SCC's decision in *Bhasin v. Hrynew* allows parties to a contract to establish their own standards for good faith performance of the contract provided those standards are not manifestly unreasonable. In appropriate circumstances, local governments may wish to consider providing specific terms in a contract for the applicable standards of the parties for good faith performance of the contract.

- *Contractual dealings with other parties: Good faith.* Similar to the above comments with respect to negotiation of contracts, local governments need not provide full disclosure of their bargaining position unless obligated by contract; however, they should act in good faith towards other contract parties and should not actively mislead or deceive other parties about matters linked to the performance of the contract.[16] Undoubtedly, future court decisions will give additional meaning and greater clarity to the organizing principle of good faith and duty of honesty established by the SCC in *Bhasin v. Hrynew.* Until then, local governments are advised to apply an "honesty is the best policy" approach to all contract negotiations, drafting and performance.

***Lindsay Parcells***

[16] See *Landmark Decision Establishing New Duty To Act Honestly In Performing Contracts* by LP Lowenstein, J. Code and R. Carson, www.*mondaq.com*, Nov. 15/14.

## *Securing Social Licence & First Nations Support – The Case of Site C*

***Introduction***

As standard practice, environmental assessment approval is required before major projects may be carried out in British Columbia. This regulatory framework is intended to assess the economic, social, health, environmental and heritage impacts with a view to mitigating the project's negative effects and, in rare circumstances, shelving a project entirely.

However, as we know from the Enbridge Northern Gateway Pipeline saga, environmental assessment approval is not always enough. The Northern Gateway project is still at risk of being shelved because the requisite "social licence" and First Nations support has not been secured. The Supreme Court of Canada decision in *Tsilhqot'in Nation v. British Columbia* only reinforces the important role of First Nations vis-a-vis major projects.[17]

The negotiation principle of BATNA[18] – Best Alternative To a Negotiated Agreement, or Plan B, comes into play here. Project proponents in negotiations will often strengthen their leverage to reach a favourable outcome by strengthening, or appearing to strengthen, their Plan B, and weakening, or appearing to weaken, the Plan B of others.

We have seen this strategy employed in the new LNG industry. Premier Christy Clark made the development of the LNG industry a cornerstone of her election platform – effectively signalling a weak Plan B. The LNG proponents, already in a

[17] Refer to the Fall 2014 Newsletter for an overview of Tsilhqot'in Nation v. British Columbia.

[18] "BATNA" was developed by Roger Fisher and William Ury and set out in their ground-breaking book "Getting to Yes: Negotiating Agreement Without Giving In."

**Securing Social Licence (continued from page 12)**

good negotiating position as a result, improved their leverage further by delaying final investment decisions and raising the spectre of competing project opportunities as global players in the industry. The LNG proponents' apparent "willingness to walk" strengthened their Plan B which undoubtedly contributed to the 50%

reduction in the LNG tax rate announced by the provincial government in Fall 2014.

The Site C dam project, announced by the Premier before Christmas, illustrates another variation of the BATNA negotiating principle.

***What is Site C?***

The Site C Clean Energy Project (Site C), a 1,100 megawatt hydroelectric dam on the Peace River, is the most expensive public infrastructure project ever proposed in BC. At an anticipated cost of nearly $ 9 billion, Site C will flood or otherwise adversely impact about 50,000 acres of the remaining Peace River Valley and create an 83 kilometre reservoir.

**Reservations expressed by the JRP:**

**"The Panel concludes that the Proponent has not fully demonstrated the need for the Project on the timetable set forth."**

**"The Panel cannot conclude on the likely accuracy of Project cost estimates because it does not have the information, time, or resources. This affects all further calculations of unit costs, revenue requirements, and rates."**

**"The Panel concludes that, basing a $7.9 billion Project on a 20-year demand forecast without an explicit 20-year scenario of prices is not good practice. Electricity prices will strongly affect demand, including Liquefied Natural Gas facility demand."**

**(Joint Review Panel Report, pp. 280, 287, 306)**

***What is the recent history of Site C?***

In its May 2014 final report, the federal/provincial joint review panel (JRP) on Site C found that the proposed dam generated significant environmental and social costs. Further, the JRP expressed serious reservations concerning the need, cost and alternatives to Site C. In short, the need and economic case for the dam was not made out.

To address these shortcomings, the JRP called for the review of Site C by the independent and expert BC Utilities Commission (BCUC).

**JRP recommendations for BCUC review:**

**RECOMMENDATION 46**

**If it is decided that the Project should proceed, a first step should be the referral of Project costs and hence unit energy costs and revenue requirements to the BC Utilities Commission for detailed examination.**

**RECOMMENDATION 47**

**The Panel recommends that BC Hydro construct a reasonable long-term pricing scenario for electricity and its substitutes and update the associated load forecast, including Liquefied Natural Gas demand, and that this be exposed for public and Commission comment in a BC Utilities Commission hearing, before construction begins.**

**RECOMMENDATION 48**

**The Panel recommends, regardless of the decision taken on Site C, that BC Hydro establish a research and development budget for the resource and engineering characterization of geographically diverse renewable resources, conservation techniques, the optimal integration of intermittent and firm resources, and climate-induced changes to hydrology, and that an appropriate allowance in its revenue requirements be approved by the BC Utilities Commission.**

**RECOMMENDATON 49**

**The Panel recommends that, if Ministers are inclined to proceed, they may wish to consider referring the load forecast and demand side management plan details to the BC Utilities Commission.**

In October 2014, the federal and provincial governments chose to ignore these JRP recommendations and granted Site C the required environmental assessment approvals.

In response, BC and Alberta Treaty 8 First Nations, as well as landowners in the Peace River valley, initiated 5 court challenges to the environmental assessment approvals in federal and provincial court. In December, BC Treaty 8 First Nations launched a further court challenge, bringing to 6 the total number of court challenges to Site C.

What is the Province Doing to Secure social Licence & First Nations' Support for Site C?

Similar to the Northern Gateway project, Site C claims to have environmental assessment approval but still arguably does not have social licence and First Nations' support.

The most likely explanation for the Province's decision to ignore the recommendations of the JRP and announce that Site C will proceed, despite numerous court challenges, is relatively straight forward. An adverse finding by the BCUC – confirming the JRP's finding that the need and economic case for Site C has not been made out - would very likely eliminate the possibility of obtaining social licence and any First Nations' support for the project.

Similar to LNG, it has become increasing clear that Site C is a cornerstone of Premier Christy Clark's vision for economic development. In an effort to obtain the requisite social licence and First Nation support for the project or at least to limit opposition, the Province has conducted a variety of largely confidential analyses over the past 6 months to support the immediate need for Site C, its superior cost-effectiveness and the lack of any viable alternatives. In effect arguing there is no Plan B.

Most importantly, for BC taxpayers and ratepayers not affected by the flood waters of the dam, the Province has sought to demonstrate there is no alternative to increasing the provincial debt and electricity rates to pay for Site C – whatever those increases may ultimately be.

The background information released in conjunction with the December 2014 Site C green

**Securing Solid Licence - Recent History of Site C (continued from page 14)**

light announcement is carefully crafted to support this "no Plan B" strategy. Site C is the only option:

- to keep electricity rates amongst the lowest in North America,
- to meet a 40% increase in electricity demand over the next 20 years,
- because the options of natural gas fired generation, market purchases, and geothermal are not viable, and
- because the only other viable option according to the Province – independent power producers - will cost ratepayers $110-$130/MWh roughly double the estimate of $64-$67/MWh for Site C.

This approach leaves Local Governments, First Nations, landowners, independent power producers (for example wind, run-of-river, solar), geothermal proponents, natural gas proponents, and others who take strong exception to the Province's new findings without detailed information. And, without a full and fair opportunity to test the Province's assertions regarding Site C through a BCUC expert and independent assessment and public hearing.

Without such review, the Province is unlikely to secure the requisite social licence and First Nations' support for Site C, even if the courts determine that the environmental assessment approvals are valid.

***Rob Botterell***

## *Use of Video Surveillance by Local Governments*

Advances in technology have made video surveillance an increasingly attractive means of achieving a variety of local government goals. However, the use of video surveillance by public bodies, including local governments, is governed by the *Freedom of Information and Privacy Protection Act* (FIPPA). Thus, at a minimum, local governments must ensure that FIPPA authorizes their use of video surveillance before putting such programs in place.

Additionally, we recommend that local governments follow the Office of the Information and Privacy Commissioner (OIPC) *Public Sector Video Surveillance Guidelines*, which may include completing a Privacy Impact Assessment for review by the OIPC and developing a video surveillance policy.

***Application of FIPPA***

Many local Governments have implemented or plan to implement video surveillance programs for reasons of crime prevention, public safety, or as part of their operational duties. However, video surveillance is considered the collection of personal information and must be consistent with FIPPA's requirements.

***Collection and Use of Personal Information***

FIPPA contains specific rules that govern the collection and use of personal information by public bodies. "Personal information" means recorded information about an identifiable individual other than basic contact information. Video and audio recordings of an individual's image and voice are considered identifiable information.

Public bodies may collect personal information, but only in the circumstances permitted by FIPPA section 26. The purposes most relevant in the local government context are:

(a) the collection of the information is expressly authorized under an Act,

(b) the information is collected for the purposes of law enforcement,

**Use of Video Surveillance (continued from page 15)**

(c) the information relates directly to and is necessary for a program or activity of the public body,

A public body must be able to justify the collection of personal information through the use of video surveillance under one or more of the provisions in Section 26 of the Act. We note that "purposes of law enforcement" has been narrowly construed by the OIPC. Generally speaking, an investigation should already be in progress at the time that the personal information is collected. It is probably not sufficient to meet section 26(b) that the information may be useful for a future law enforcement purpose.

FIPPA section 32 limits the uses to which personal information may be put. Section 32 requires public bodies to use personal information only as follows:

(a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),

(b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36 of FIPPA.

The OIPC warns that information collected through video surveillance should not be used in a manner inconsistent with the original purpose. If a public body wishes to use personal information for a new purpose, it must first separately determine whether FIPPA permits the change.

***Notification***

Section 27(2) requires public bodies to notify the person from whom the information is collected of the purpose and legal authority for the collection. Additionally, public bodies must designate a person from whom more information about the program may be obtained. Given these requirements, the public must be advised that they will be under surveillance before entering the area being filmed.

The requirements of section 27(2) must be met unless exempted under subsection 27(3). Specifically, notification is not required if:

(a) the information is about law enforcement or anything referred to in section 15 (1) or (2) of FIPPA,

(b) the minister responsible for this Act excuses a public body from complying with it because doing so would result in the collection of inaccurate information, or

(i) defeat the purpose or prejudice the use for which the information is collected,

(c) the information

(i) is not required to be collected directly from the individual the information is about, and is not collected directly from the individual the information is about, or

(d) the information is collected by observation at a presentation, ceremony, performance, sports meet or similar event

(i) at which the individual voluntarily appears, and

(ii) that is open to the public.

***Protection of personal information***

Under FIPPA section 30, a public body must protect personal information that is in its custody and control. This requires setting up reasonable

**Use of Surveillance (continued from page 16)**

security precautions against unauthorized access, collection, use, disclosure or disposal.

***Retention of Personal Information***

Where an individual's personal information is in the custody or under the control of a public body, and is used by or on behalf of the public body to make a decision that directly affects the individual, then the public body must ensure that the personal information is retained for at least one year after being used so that the affected individual has a reasonable opportunity to obtain access to that personal information (section 31).

***Public Sector Video Surveillance Guidelines***

The OIPC has stated that where video surveillance is used by a public body, that use should be governed by rigorous rules that cover the following:

(1) Use of surveillance for security purposes;

(2) Layout of surveillance equipment;

(3) Maintaining security of records (access, disclosure and retention); and

(4) Auditing for compliance and effectiveness.

The OIPC strongly recommends that public bodies draft their surveillance policies based on the *Public Sector Surveillance Guidelines*, which can be found hyperlinked above or on the OIPC website.

The OIPC has also recommended that public bodies contemplating the use of video surveillance complete a privacy impact assessment before making any decision to proceed with surveillance.

***Conclusion***

Local governments contemplating the use of video surveillance must ensure that personal information is used, managed and disposed of in accordance with the Act. Additionally, local governments should consider developing policies in accordance with the OIPC *Guidelines*. While the *Guidelines* are not binding on public bodies, they do provide an excellent indicator of the OIPC's expectations. It is reasonable to assume that a public body's surveillance activities will be less vulnerable to attack under FIPPA if it has policies in place that the OIPC considers adequate.

***Robin Dean***

## *Parties Permitted at Heritage Park: Sudbury v. Delta*

The petitioners in this case own property neighbouring a four-acre park owned by the respondent, the Corporation of Delta. The petitioners claimed that Delta's zoning and use of the property was outside the scope of the

**Parties Permitted at Heritage Park (continued from page 17)**

authorization granted by the Agricultural Land Commission (the "ALC"). The petition was brought pursuant to the Judicial Review Procedure Act (the "JRPA"), which allows an aggrieved party to petition the British Columbia Supreme Court for review of a decision of an administrative body.

The park site at issue was originally part of a larger parcel within the Agricultural Land Reserve (the "ALR"). In 2003, Delta entered into an agreement with a private land owner to purchase a portion its land in order to preserve the Kirkland House, a historical farmhouse on the property, and to create a heritage park. The ALC approved the subdivision of the ALR property and the dedication of the four-acre parcel as a heritage park site.

In 2004, Delta passed bylaws amending its Official Community Plan designation and zoning for the park. The rezoning bylaw, which required approval from the Ministry of Agriculture under s. 903(5) of the Local Government Act, was approved and adopted in 2004. In 2005, Delta began allowing a non-profit organization, the Kirkland House Foundation (the "Foundation"), to manage the heritage site. The Foundation began renting out the facilities and grounds for events.

In 2013, Delta purchased the Harris Barn, a historical farm structure, in order to prevent the barn from being demolished. The barn was relocated to the park and a paved parking lot was constructed occupying approximately one-half of the park site. After the barn was relocated, the number of events held at the park increased. An event was held at the park nearly every Saturday and Sunday night, lasting often until past 1 a.m. The petitioners were disturbed by the noise emanating from the property.

In June 2014, Delta instituted a new use policy for the park which restricted events held in the barn to five nights per year. According to the policy, these events must be concluded by 10:30 p.m. Events held in the Kirkland House and on the grounds are also limited in terms of guests and must be concluded by a certain time. This policy remained in effect at the date of trial.

At trial, the petitioners sought a variety of declarations and orders from the court. Much of the court's judgment focused on the petitioners' request for a declaration that Delta's zoning bylaw, to the extent that it authorized the park to be used for third party events, was inconsistent with the *Agricultural Land Commission Act* and the resolution of the ALC and was of no force or effect. In essence, the petitioners argued that weddings and other third party events are outside the scope of a heritage park.

The terms "park" and "heritage park" were not defined in any of the relevant legislation, but the court considered the dictionary definition of park and found that a heritage park is a park with a heritage theme or with heritage buildings on it. The judge refused to find that the occurrence of weddings or other events in a heritage park detracts from the park's heritage or park character, and found that Delta's zoning bylaw allowing the third party events was within the scope of the ALC authorization.

The petitioners also asked for review of several other decisions made by Delta. The court agreed with counsel for Lidstone & Company, arguing on behalf of Delta, that the decisions were not reviewable under the *JRPA*. In a 2006 decision, *Eagleridge Bluffs and Wetlands Preservation Society v. British Columbia (Ministry of Transportation)*, 2006 BCCA 334, the Court of Appeal found that decisions with respect to management of property are not subject to the *JRPA*. In the event that he was incorrect, the judge went on to consider and dismiss the arguments of

the petitioners individually. He dismissed the petitioners' argument that the ALC authorized

**Parties Permitted at Heritage Park (continued from page 18)**

only one building on the property and that the construction of the Harris Barn was not permitted. The judge found that the ALC authorization could

not be interpreted so narrowly, as it did not specify the number of buildings permitted on the park site. In addition, the court found that moving an existing heritage farm building, the Harris Barn,

onto the property did not cause the park to lose its heritage character. Finally, the court found that the large paved parking lot was also not outside the scope of a heritage park, as the parking required at the site would depend on the number of people visiting and there was no reason to impose a limit on the space required.

The petition was dismissed.

***Rachel Vallance***

## *Court considers adequacy of notice of public hearing: Outdoor Recreation Council of British Columbia v. Chilliwack*

This case involved a challenge to the City of Chilliwack's *Zoning Bylaw Amendment Bylaw 2013* which rezoned a parcel of property to allow for the construction of a waste recycling and transfer facility. The petitioners, Glen Thompson and the Outdoor Recreation Council of British Columbia, argued that the notices of public hearing failed to adequately describe the purpose of the rezoning. In particular, the petitioners claimed that the notices should have explicitly stated that the facility would process hazardous waste.

In advance of the rezoning, the City fulfilled the requirements of its public hearing procedure bylaw by posting a sign on the property advising the public of the rezoning application, affixing a decal to that sign to notify the public of the date of the public hearing, and providing notice directly to adjacent land owners. The City also posted a copy of a staff report on its website on prior to the first reading of the bylaw, which included a detailed description of the proposed facility.

Although the City was legally entitled to waive the requirement to hold a public hearing under s. 890(4) of the *Local Government Act* because the rezoning did not require an amendment to its OCP, the City's policy was to hold public hearings on all zoning amendments. As a result, the City published two notices of public hearing in the local newspaper. In addition to the City's efforts, the rezoning application was noted in two articles in the local press, which indicated that the property might one day house hazardous materials. Following the public hearing in December 2013, the City gave fourth and final reading to the bylaw.

The petitioners, who were not notified of the hearing in time to make representations to council, argued that the notice published by the City failed to meet the requirements of s. 892 of the *Local Government Act*. Specifically, the etitioners argued that the notice failed to state "in general terms, the purpose of the bylaw" because it failed to specify the fact that hazardous materials would be processed on the property.

The court reviewed the relevant case law, finding that the notice must "inform those reasonably affected by the proposed rezoning of its intent so they may decide whether to seek further information or make representations." The focus must be on the average citizen. The Court found that the relevant cases are highly fact-specific and not always easily reconciled with each other.

Considering the notice at issue, the court found that the word "waste", although flexible and broad in scope, is likely to cause a citizen to pause or question. The court found that the description was given further context by the fact that the intended facility would be in the Special Industrial

**Court Considers Adequacy of Notice of Public Hearing (continued from page 19)**

Zone, a zone which allowed various potential uses consistent with the proposed use and had been in existence for some time. Ultimately, the court agreed with counsel for Lidstone & Company, arguing on behalf of the City, that the notice was sufficient.

The court also dismissed several procedural arguments raised by the petitioners. Firstly, the court refused to find that the map in the notice

failed to meet the requirements of s. 892(2)(d), which requires the notice to state "the land or the lands that are the subject of the bylaw" and s.

892(4)(d), which requires the notice to include a sketch of the area, including the name of adjoining roads. The map met the requirements by identifying the only adjoining road, and was not required to identify the Fraser River as suggested by the petitioners. The court also dismissed the petitioners' argument that the City was required to give notice to certain neighbours with a particular interest in the issue, notwithstanding that such neighbours did not fall within the scope of those required to be notified under the *LGA*.

The court considered whether the City had acted fairly, a duty apart from its various statutory obligations. The court noted that the City had posted the staff report on its website several days before Council ever considered the bylaw, and again as part of the agenda package in advance of the public hearing. As a result, the court found there was no basis to find that the City fell short of its duty to act fairly and make relevant materials available to the public in a timely way. There was also no indication that the City had attempted to conceal the true nature of the zoning amendment.

Finally, the petitioner argued that the restrictive covenant and good neighbour agreement, which were required of the landowner as part of the rezoning, should have been made available to the public. However, the court found that neither statute nor the City's bylaws required that information to be included in the notice. Furthermore, although not yet executed, the terms of the proposed covenant were include in the staff report and therefore available to public. The good neighbour agreement had not yet been prepared or executed at the time of the hearing. Ultimately, the court found that the petitioners concerns with regards to the restrictive covenant and good neighbour agreement were not well-founded.

The petition was dismissed.

***Rachel Vallance***

## *Seizure of animals by Burnaby lawful, but SPCA liable for defamation: Simans v. Burnaby 2014*

The plaintiffs in this case operated 1atatime Rescue Society, an animal shelter for cats and dogs, out of a residence in Burnaby. The society rescued dogs and cats from Canada, the United States and Asia. The City had received complaints regarding the number of animals on the property. The plaintiffs had been contacted by the BCSPCA, which handles animal control for Burnaby, notifying them that they must comply with the City's bylaws which restrict animals kept in a home to two dogs and four cats and prohibits unlicensed kennels. Bylaw violation notices were issued but they plaintiffs failed to comply.

On June 13, 2012, the plaintiffs were evicted from their premises for non-payment of rent. At the same time, the City of Burnaby and the BCSPCA attended the residence and seized 52 dogs and 19 cats from the plaintiffs, as well as the body of a dead cat which the plaintiffs had put in a freezer pending its cremation. While the animals were under their care, the defendants spent approximately $10,000 on medical costs to treat

**Seizure of Animals by Burnaby lawful SPCA (continued from page 20)**

several of the animals. Fourteen of the animals were adopted and one dog was euthanized

because of health concerns and aggression. The defendants misplaced the body of the dead cat.

At trial, the plaintiffs argued that the seizure constituted a tort of conversion and that the City's bylaws regarding the seizure of cats were not authorized by the Community Charter. The plaintiffs sought various orders including the return of the euthanized dog and deceased cat. They also sought damages and a permanent injunction for defamation resulting from

statements made by the BCSPCA regarding the health of the animals seized.

The court disagreed with the arguments made by the plaintiff, finding that the seizure of the animals was authorized by the City's bylaws and the Prevention of Cruelty to Animals Act. If the plaintiffs wished to challenge the City's bylaws, they were required to bring an application to court under s. 262 of the Local Government Act. Section 262 requires notice to be given to the municipality and must be brought not more than one month after the adoption of the bylaw. They plaintiffs had not complied with these requirements. The court also found that the defendants had not committed the tort of conversion as the plaintiffs were not in lawful possession of the animals at the time of the seizure.

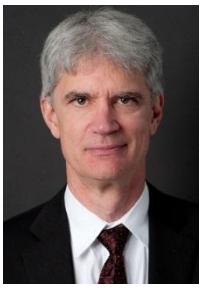
With regards to the deceased cat, the court found that it was lawfully seized by the bailiff during the eviction as a chattel. The Writ of Possession held by the plaintiff ended any rights that the plaintiffs had over the dead cat. While it was unfortunate that the body of the cat was lost, it was not the property of the plaintiffs.

Regarding the claims for defamation, the court reviewed the applicable test and found that many of the statements in the press, such as those calling Ms. Simans a "rescue hoarder", were either not defamatory or were substantially true and protected by the defence of justification. The court did find one instance of defamation, where it was implied that the scarring on a dog's face had been caused by the plaintiff's mistreatment. In reality, the injuries to the dog had been the reason for its rescue, and the plaintiffs had been treating the injuries, including by paying for expensive surgery. The court ordered the BCSPCA to pay $2,500 in damages to the plaintiffs for the defamatory statement. As there was no evidence that the City was involved in the defamation, it was not liable for any damages to the plaintiffs.

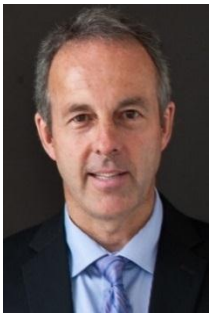
***Rachel Vallance***

***Lidstone & Company*** *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.*

We are pleased to announce that our articled student **Rachel Vallance** will start at her new position as an Associate Lawyer with the law firm as of May 25, 2015.



***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.

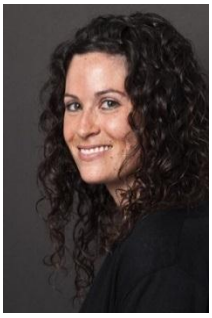


**Lindsay Parcell**s practices municipal law with a particular interest in land use, real property, corporate, commercial, mediation and environmental matters. Lindsay has 20 years of legal experience. He was called to the Alberta bar in 1992 and the British Columbia bar in 1995. Lindsay completed a 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 also advocates 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.



***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 Moffatt*** is a research and opinions lawyer in the areas of municipal law, land use, administrative law 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*** studied law at the 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.