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Law Letter

In this issue

Housing Agreements – Best Practices

Housing agreements are a flexible tool that can be used by local governments for a variety of housing needs. Most often, they are used to provide affordable housing or housing for persons with special needs.

The statutory authority for housing agreements is found in s. 483 of the *Local Government Act (BC)* under the heading "Housing agreements for affordable housing and special needs housing".

Neither "affordable housing" or "special needs" is defined in s. 483 or elsewhere in the *Local Government Act* and the contracting parties to a housing agreement have a wide range of options in respect of the purposes, terms and conditions for which housing agreements can be used. In effect, a housing agreement can be used in any circumstances that a local government considers to be a special housing need and that is defined by bylaw.

Under s. 483, there are certain mandatory requirements for housing agreements. Under s. (1), a housing agreement must be established by bylaw and under s. (4), the agreement may only be amended by bylaw with the consent of the owner. Under ss. 483(5)-(7), a notice of the housing agreement must be filed in the Land Title Office and registered against title to the property to which the housing agreement applies. As well, under s. (3), a housing agreement must not vary the use or density from that permitted in the applicable zoning bylaw. Aside from these legal requirements, the form and content of the housing agreement is left to the discretion of the contracting parties and under s. 483(2), a housing agreement may include terms and conditions agreed to by the local government and the owner regarding the occupancy of the housing units identified in the agreement, including the form of tenure of the housing units; the availability of the housing units to classes of persons identified in

the agreement, the administration and management of the housing units and the rents, and lease, sale or share prices that may be charged, and the rates at which these may be increased over time.

the Law Letter is published quarterly by:

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Circumstances where housing agreements are used

Housing agreements are typically used in circumstances where a local government, developer or non-profit group wishes to develop affordable or special needs housing and the local government wishes to establish terms and conditions for the design, construction and use of the housing. The agreement may include terms that address neighbourhood concerns respecting the appearance or use of the housing as well as contractual obligations to ensure that the housing is used for the intended purpose.

Housing agreements are also often used in circumstances where a developer is seeking increased density for a development and a local government approves increased density in return for the developer providing affordable or special needs housing as part of the development. Authority for density benefits for affordable and special needs housing is found in s. 482 of the *Local Government Act*. Under s. 482(1), a zoning bylaw may establish different density rules that provide for higher density if conditions prescribed in s. 482(2) are satisfied, including conditions relating to the provision of affordable and special needs housing defined in the zoning bylaw and a condition that the owner enter into a housing agreement under s. 483.

Key elements of housing agreements – identifying the special housing units

Consistent with s. 483(2) of the *Local Government Act*, a housing agreement will invariably include a description of the space set aside for affordable or special needs housing. The space may include the entire property or an entire building within the property or a subset of those. In any event, the agreement should clearly identify the space for which the affordable or special needs housing is intended and preferably, that space should be identified in a schedule attached to the housing agreement. The housing agreement should also identify certain minimum standards that must be met in respect of the housing including the floor space, number of bedrooms, bathrooms, appliances and other services and features. The housing agreement will also stipulate the rents or sale prices that can be charged and these requirements should provide for future adjustments on account of inflation or other circumstances.

Key elements of housing agreements – identifying the persons eligible for special housing units

Also consistent with s. 482(2) of the *Local Government Act*, a housing agreement should identify the class of persons who are eligible for the affordable or special needs housing. The criteria to identify these persons should be based on easily understood criteria and preferably on independent standards that are widely accepted. For example, in the case of affordable housing, criteria is frequently based on "income thresholds" or "housing income limits" established by BC Housing or the CMHC. The benefit of using these criteria is that they are flexible and automatically adjust over time. Alternatively, local governments may wish to use their own criteria based on income or affordability with an inflation adjustment clause based on the Consumer Price Index or some other measure. In addition to these requirements, terms and conditions should be included in the housing agreement to ensure that any future occupancy or disposition of the affordable housing units be consistent with these requirements. Local governments may also wish to include residency requirements to ensure that persons acquiring or occupying the housing are living and working in the locale and having a substantial connection with the community. The agreement should also provide mechanisms to address situations where a previously eligible person no longer complies with the terms of the agreement. The housing agreement will also frequently include provisions that impose additional standards in respect of the use and occupancy of the affordable or special housing units. The housing agreement should include a requirement that any disposition of the housing unit must only be to persons who satisfy these requirements.

Key elements of housing agreements – enforcement mechanisms

A housing agreement should also include enforcement mechanisms to ensure compliance with the agreement. Enforcement mechanisms may include rent charges or other monetary penalties. It is also recommended that a housing agreement include a provision allowing the local government to remedy any issues itself or seek specific performance of the agreement through the courts and recover its costs of doing so. An option to purchase may also be negotiated to provide an additional remedy whereby local government may acquire the property if there is material non-compliance. Invariably, these enforcement provisions will be subject to negotiation and a local government's ability to include them in the housing agreement will depend on the amount of leverage it has with owners.

Of course, a housing agreement should also be registered against title as a Section 219 Covenant to provide additional protection and ensure that the local government can enforce its rights against subsequent owners of the property. As an additional assurance, housing agreements should also include a provision that on future disposition of the property, the party disposing of the housing unit must provide written notice of the housing agreement to the transferee with mechanisms to ensure the transferee is eligible to acquire and occupy the housing unit.

Key elements of housing agreements – administration and management

A housing agreement should also identify who is responsible for the administration and management of the affordable or special needs housing units including the manner in which the housing units will be made available to eligible occupants. The agreement should also detail the administrator's rights and responsibilities. The administrator may be the owner, a non-profit organization, a commission established by the local government, the local government itself or

some other person or entity identified by the housing agreement. The housing agreement should also include provision for an administration fee that is payable to the administrator to ensure that the costs of administration are covered.

The role of BC Housing

Finally, local governments should be aware that in many affordable or special needs housing projects, BC Housing will be actively involved and insist on its own agreement with the property owner that will take priority over any housing agreement between the owner and the local government. Typically, the BC Housing Agreements will address most of the provisions identified above; however, it is often desirable for local governments to enter into their own separate agreement with the owner and to register the agreements against title as a Section 219 Covenant.

Summary

In summary, housing agreements are a flexible and effective tool to provide for affordable or special needs housing and to ensure that it is made available to targeted groups, families or individuals. The housing agreement, or any amendment thereof, requires the consent of the owner and must accompanied by a bylaw and filing of notice at the Land Title Office. The agreement should clearly identify the persons eligible for the special housing, the rent or sale price for the housing units and provisions to ensure compliance. Finally, the housing agreement should be registered as a section 219 covenant against title to the applicable property.

Lindsay Parcells

Tax Sale Troubleshooting

The ability to sell property for delinquent taxes is a powerful tool at the disposal of municipalities. However, with great power comes great responsibility (and potential headaches for municipal staff). In our experience, one of the biggest sources of tax sale stress is the requirement to notify owners after property has been sold. Every December, we receive e-mails from clients who have been unable to locate and serve registered owners and chargeholders of tax sale property as the three month deadline to do so is quickly approaching. Fortunately, a clear understanding of the process and a few tips and tricks can go a long way toward avoiding last minute stress.

Tax Sale Process

Part 16: Division 7 of the *Local Government Act* constitutes a complete code governing tax sales and it is important that local governments follow the provisions precisely. If there are procedural issues with the tax sale or if the municipality fails to provide notice following the tax sale, an owner may bring an action to have the sale set aside. Further, a failure to provide notice may result in liability for the municipality; pursuant to s. 669(3) of the *Local Government Act*, an owner of property or an owner of a registered charge on the property must be indemnified by the municipality for any loss or damage sustained by the person on account of the sale if the property was not liable to taxation, the taxes were already paid, or notice was not provided. An action to set aside the tax sale may only be brought during the redemption period, while an action for indemnification or compensation may be brought up to one year after the end of the redemption period.

Notification Requirements

When a property is sold at tax sale, section 657 of the *Local Government Act* requires the collector to give written notice of the sale and of the day the redemption period ends to persons registered in the land title office as owner of the property as well as owner of a charge on the property. Notice must be provided not later than three months after the sale.

Who to Serve: As noted above, in addition to the registered owner of the property, all owners of charges on the property must be notified of the tax sale. This includes holders of charges such as mortgages, easements, covenants, statutory rights of way, judgments and liens. It is important to ensure that registered owners of charges are notified of the tax sale, not only to ensure compliance with s. 657, but also to avoid a claim against the municipality for damages. While some charges, such as statutory rights of way and easements, are preserved when title is conveyed to the tax sale purchaser, others, such as mortgages, are extinguished. As a result, promptly after the tax sale, staff should file the notice of tax sale in the land title office and conduct a title search to determine who must be notified.

How to Effect Service: Municipalities may provide notice either by serving the notice or by sending it by registered mail. If personal service is chosen, the process server or municipal staff member who is responsible for service must ensure that the notice is provided directly to the registered owner or chargeholder; it is not sufficient to leave the notice at the property or with another person at the property. Similarly, if registered mail is the chosen method of service, municipalities should require a signature from the owner or chargeholder upon delivery.

Staff should also ensure that the municipality maintains records which can be relied upon to prove service. Where registered mail is used, a copy of the delivery confirmation which shows that the person who is registered as the owner or chargeholder received and signed for the notice will be sufficient. In cases where the notice is personally served, it is helpful to obtain an affidavit from the process server or staff member who served the document to protect the municipality in the event service is questioned at a later date.

When serving corporations, municipalities should be careful to ensure that the proper address for service is used. We recommend conducting a corporate registry search rather than relying on the address in the land title registry in order to ensure that the corporation is served at its current address.

Municipalities regularly encounter problems when attempting to serve individual owners or chargeholders. In some cases, owners may be evading service while in other cases they may simply be difficult to locate. While process servers, skip tracers and legal counsel can assist, there are several steps that staff can take before seeking outside help. For example:

Use Google! Entering the name of an owner in online search engines can turn up helpful results with clues to the owner's current location and ways in which they can be contacted.

Do it the old fashioned way. Use the phonebook or Canada 411 to search the owner's name.

Ensure that you have sent registered mail to all of the addresses you have on file for the owner – this may include the address in the assessment file, the address used by the owner to register for municipal services or programs, the residential address of the tax sale property and the address that appears for the owner on the title search.

Search the land title registry, court services online, and other government databases. Even if these databases do not provide you with contact information for the owner, they may provide other information such as the name of the owner's lawyer or notary or information about other properties registered in the owner's name.

Contact others with registered interests in the property, such as individual chargeholders or banks. They may be able to assist you by providing contacting information or contacting the owner on your behalf.

When to Begin and When to Look for Help: Given the short timeline for service, we recommend that municipalities begin attempts to serve owners and chargeholders immediately after the tax sale occurs. If it is not possible to serve owners and chargeholders personally or by registered mail, the municipality will have to apply to the Supreme Court for an order that notice may be served by substituted service.

To obtain an order for substituted service, it is necessary to show that the municipality undertook a diligent search for the owner or chargeholder. As a result, we recommend that staff make a concerted effort to locate and serve owners and chargeholders and keep detailed records of all attempts to do so. These records will form the basis of affidavit evidence that will be used to support the application.

We recommend that legal counsel be notified by mid-November if it appears as though an order for substituted service will be necessary; it will take some time to prepare the materials and obtain the order and service must still occur prior to the three month deadline. In addition, court time is limited around the holidays so it is always preferable to make the application in early December as opposed to later in the month. As a result, if after a couple of weeks of attempting service by registered mail the municipality has still not effected service, we recommend moving on to attempting personal service and using some of the tips outlined above.

It is also important to note that it is not open to council to cancel a tax sale due to a failure to provide proper notice. The B.C. Supreme Court has confirmed that the authority in s. 668 of the *Local Government Act* to cancel a tax sale for manifest error only applies to errors that occur in the tax sale itself or in the proceedings before the sale, not to errors that occur after the tax sale: *McCready v. Nanaimo (City)*, 2005 BCSC 762.

Rachel Vallance

Brownfield Regulation (Part 1)

This article describes the current British Columbia regime from the perspective of a local government. Part 2 in the next newsletter will focus on the Province's policies on site profiles and local governments' roles.

The *Environmental Management Act* of British Columbia contains Part 4 entitled "Contaminated Site Remediation" and Part 5 entitled "Remediation of Mineral Exploration Sites and Mines". The Contaminated Sites Regulation was enacted under the *Environmental Management Act*. Effectively, the statute sets out a five stage process for dealing with contaminated sites. The stages are screening, investigation and decision, planning, remediation, and evaluation and monitoring.

In regard to screening, most municipalities have site profile schemes in place. If a site profile scheme is in place, the profile is required when an owner or occupier applies for zoning, subdivision, development, demolition or removal of prescribed soils. Part 2 of this article addresses the Province's policies in regard to site profiles and local governments' roles. As well, a site profile can be ordered by the director of waste management.

In regard to site investigation and the making of a determination, there are a number of approaches. These include communications with prior owners or occupiers, a search of the provincial Site Registry, initial investigations on site, a search of archival records and historical activities, and detailed on-site investigations with sampling and chemical analysis. Under the regulation, remediation is required when substances are contaminated in accordance with a scheme of numerical standards set out in the regulation. As well, the director of waste management can make a determination as to whether a site is contaminated.

In regard to planning, an owner or occupier of land or a person proposing to develop contaminated land may go through one of a number of processes to deal with responsibility. A "responsible person" may be absolutely, retroactively or jointly and severally responsible for contaminated site clean-up costs. A responsible person may be an existing or prior owner or occupier, a neighbour of a parcel from which contamination migrated, or a producer or transporter of toxic substances. There are a number of statutory exclusions, including where the subject site is polluted by an adjacent or nearby site. As well, a person may apply to the director of waste management to be designated a "minor contributor" to protect the applicant from joint and several liability and to cap for the applicant.

The investigation process may result in the need to plan for remediation. In this regard, a person proposing to redevelop a Brownfield site may do one of the following:

- contaminated soil relocation, required where underground basements or parking lots will be developed, pursuant to contaminated soil relocation agreements under the Regulation ;
- approval in principle by the director of waste management after they have evaluated remediation alternatives and programs;
- litigation.

In regard to implementing remediation, the regulation provides that contaminated soil may be either removed if it exceed the numerical standards and/or underground facilities such as basement and parking lots are being developed, or contained and managed on site where the regulation provides for "risk based standards".

In regard to the final stage, an owner, occupier or other person may apply for a certificate of compliance if the regulation's numerical or "risk based standards" have been complied with. The director of waste management may require as well as a confirmation of remediation report. The certificate may be accompanied by conditions, including registration of a covenant under section 219 of the *Land Title Act* or a notation on the Site Registry.

In addition to the usual processes resulting in remediation, the Minister has the authority under the *Act* to make an order for remediation. The order may include the authority for the Province or its agents to enter on the property and use labour, services, materials and equipment to remediate. The *Act* also provides for funding of "orphan site" remediation.

The BC regulatory scheme derives from the United States concept of "polluter pays". That is, a person (being an individual, corporation or other legal entity) is liable for remediating a contaminated site. To the extent a person has caused contamination, the person is identified under the BC scheme as a "responsible person". Responsible persons include existing owners, former owners, owners of a parcel from which pollution derives, producers or transporters of contaminated substances, and others.

There are a number of exclusions from these general rules, including circumstances where the parcel of land has been polluted by a previous owner if the new owner acquired the property "innocently", migration of contamination from another parcel, a third party with no relationship to the owner, a natural occurrence (unassisted by human conduct), or an "act of God". Also exempt are persons holding the benefit of a mere covenant under section 219 of the *Land Title Act*, right-of-way (including statutory right-of-way), easement, judgment, lien, crown grant reservation, or subsurface right interest in real property.

In regard to the "innocent acquisition" exclusion, the person claiming the exclusion must evidence

that as of the date they acquired title or possession of the parcel, the parcel was already demonstrably contaminated and the person had no feasible means of knowing or suspecting pollution *and* they made "all appropriate inquiries" of prior title holders, occupiers and uses of the parcel. ("All appropriate inquiries" means that the person must investigate the proposed acquisition in accordance with "good commercial or customary practice", including a previous relationship with or knowledge of the transferor or occupier immediately prior to acquisition, the transfer price in relation to fair market value, ascertainable information about the parcel, and obvious evidence of contamination). The person claiming "innocent acquisition" loses the exclusionary protection if they transfer an interest in the parcel of land without first informing the party seeking a new interest. As well, the person seeking the "innocent acquisition" exclusion must be able to evidence that they did not cause any contamination on the parcel.

The British Columbia legislation and regulations operate *in addition to* the case law. Under the *Environmental Management Act*, a responsible person is liable in several ways to any other person for costs of remediation. These classes of liability are subject to the exclusions from responsibility for remediation of a site. As well, except in the case of absolute liability, a responsible person may have a defence of due diligence. The due diligence defence applies generally to strict liability offences under statutes. The defence derives from the Supreme Court of Canada decision in *R. v. Sault Ste. Marie,* [1978] 2 S.C.R. 1299. The defence is available to a responsible person, if, on a balance of probabilities, it is established that the person believed in a mistaken set of facts which, if true, would render the act or omission innocent, or the accused took all reasonable steps to avoid the particular event.

The key issue is "reasonable foreseeability". In *R. v. MacMillan Bloedel*, [2002] B.C.J. No. 2083, the BC Court of Appeal considered circumstances where an unforeseen microbiological process caused pipes to corrode resulting in a leak of a toxic substance. The court held that the fact that the leak occurred as a result of an unforeseeable cause is determinative. The court held that the focus of foreseeability is not the cause of the leak, but rather the occurrence of the particular event giving rise to the charge. The court confirmed that the two tests established under *Sault Ste. Marie* are mutually exclusive such that it is not necessary to satisfy both tests.

The British Columbia regulatory regime includes an opportunity for a responsible person to make application to the Province for designation as a "minor contributor". If the director of waste management approves this classification, the director must allocate a proportion of the cost of remediation to the minor contributor. As a result, in any subsequent litigation, the "minor contributor" is liable only to the extent determined by the director.

Don Lidstone

When is a Minimum Fine not a Minimum Fine?

There is some confusion as to whether the Provincial Court has discretion to impose a lesser fine than the minimum fine provided by bylaw, when hearing municipal ticket disputes or long form (*Offence Act*) bylaw prosecution cases.

In *R. v. Lurie*, a 2005 decision of the Supreme Court, the City of Victoria successfully appealed a Provincial Court judgment that imposed a lower fine than the minimum fine for the bylaw infraction specified by the bylaw at issue. On appeal, the Supreme Court held that there is no discretion to vary the amount of a bylaw fine. While the decision was based on the wording in the *Community Charter*, it did not address s. 88 of

the *Offence Act,* which expressly **requires** provincial court justices of the peace and judges to consider the means of the defendant to pay, and authorizes the judge to impose a reduced fine if the defendant cannot pay the fine that would otherwise be imposed. Section 88 applies despite any other section of the *Offence Act* or any other Act, (with the exception of the *Motor Vehicle Act*)*:*

Court may impose a lesser fine

88 (1) Despite any other section of this Act or any other Act, in determining the fine to be imposed on conviction, the justice must consider the means and ability of the defendant to pay the fine, and, if the justice is of the opinion that the defendant is unable to pay the amount of the fine that the justice would otherwise impose, the justice may impose a fine in a lesser amount that the justice considers appropriate.

(2) If a minimum fine is established under the *Motor Vehicle Act* for contravention of a provision of that Act, a justice must not impose under subsection (1) a fine of less than the minimum established.

This same issue was before the Supreme Court again three years later, in *R. v. 0715475 B.C. Ltd*., 2008 BCSC 581. This case was an appeal of two bylaw prosecutions in which the Provincial Court imposed a fine of less than the minimum amount set out in the City of Vancouver bylaws in issue. This time, s. 88 was brought to the Court's attention in the appeal. The City of Vancouver argued that s. 88(1) does not apply to bylaws (in other words, that minimum bylaw fines cannot be lowered). This argument was rejected by the Court:

[7] The respondent, Perry Hall, was sentenced in Provincial Court on February 11, 2008, to a fine lower than the minimum $100 fine specified in Health By-law 6580 of the City of Vancouver.

[20] Section 88(1) of the ***Offence*** Act applies to by-laws and a minimum punishment in a by-law does not limit the discretion of the Justice to apply s. 88(1).

[26] In relation to Mr. Hall, I find the Court did not impose an illegal sentence and the imposition of the token fine imposed was a valid exercise of discretion in that case.

Accordingly, when pursuing bylaw enforcement in Provincial Court (tickets and *Offence Act* prosecutions*)*, local governments should be aware of the potential for a lower fine to be imposed than the minimum fine set out by bylaw.

This is one of the factors that may impact the decision to pursue bylaw enforcement via bylaw notices rather than tickets, as there is no authority for unilateral fine reductions by adjudicators when bylaw notices are adjudicated. Bylaw notice fines may be reduced by screening officers, pursuant to a compliance agreement, but only where the bylaw in issue provides for and authorizes a reduced fine as a component of entering into a compliance agreement.

For further details regarding the bylaw notice scheme, and its relative merits as compared to ticketing, see our article on this topic in the Spring 2017 edition of Law Letter

Sara Dubinsky

Employers Have a Right to Require Employees to Submit to an Independent Medical Examination

The Supreme Court of Canada has long-established that provincially regulated employers in Canada have a duty to accommodate an individual's needs provided they can do so, without incurring undue hardship, or without

sacrificing a *bona fide* or good faith requirement of the job.

Ontario's highest court recently confirmed that, under certain circumstances, employers can require employees to submit to an independent medical examination ("IME") by a doctor of their choosing part of its duty to accommodate.

The Story of Marcello Bottiglia

In *Bottiglia v. Ottawa Catholic School Board*[1], the Applicant, Mr. Bottiglia alleged that his employer, the School Board had discriminated against him by failing to allow him to return to work unless he submitted to an IME by a doctor of the School Board's choosing. Mr. Bottiglia, a 35 year employee and Superintendent of Education at the time, commenced a lengthy medical leave of absence in 2010 suffering from unipolar depressive disorder with anxiety features.

Mr. Bottiglia had been off work for almost two years when in February 2012 he communicated that he was unable to return to work and that his recovery would be prolonged. In June 2012, his lawyer wrote to the School Board to provide it with a letter from Mr. Bottiglia's doctor stating that he was unable to return to work and that such a return might place Mr. Bottiglia at a serious risk of a relapse. Then, in an about-face move in August 2012 (2 months later), Mr. Bottiglia's doctor advised that Mr. Bottiglia was capable of returning to work on a limited basis in October 2012. It is also of note that Mr. Bottiglia's paid time off was set to come to an end in October 2012.

The School Board resisted the accommodation proposed by Mr. Bottiglia's doctor and insisted that Mr. Bottiglia agree to an IME with a doctor of the School Board's choosing before allowing him to return to work to make sure that he was fit enough to do so. Without an objective understanding of Mr. Bottiglia's workplace or the essential duties of a Superintendent, which duties had changed since Mr. Bottiglia went off sick; the School Board was concerned by the change in the doctor's recommendations. Mr. Bottiglia refused to submit to the IME, resigned in 2012, and started an application to the Human Rights Tribunal of Ontario. He alleged the School Board improperly required him to attend the examination before resuming his duties and that it had provided the examiner with misleading information. The School Board did, in fact, advise the examiner of the fact that Mr. Bottiglia would soon be without benefits or paid time off, suggesting it was perhaps motivating him to prematurely return to work.

The Decisions

In short, the Tribunal dismissed Mr. Bottiglia's application. He sought a judicial review by the Divisional Court, which again sided with the School Board. By refusing to allow an appeal of the Divisional Court's decision, the Court of Appeal confirmed that, in certain circumstances, an employer will be justified in requesting that an employee attend an IME as part of the employer's duty to accommodate. In particular, this includes where the employer can no longer reasonably expect to obtain the information it needs from the employee's doctor to permit it to fulfil its duty to accommodate.

This does not mean that employers have a freestanding, unrestricted right to request an IME. Nor does it mean an employer is entitled to request an IME in an effort to second-guess an employee's medical expert. Rather, the decisions stand for the principle that where the employer has reasonable and *bona fide* grounds to question the adequacy and reliability of the information provided by its employee's medical expert, an IME may be appropriate.

[1] **2015 HRTO 1178**

In this case, the Court found that by refusing to attend the IME, Mr. Bottiglia had failed to participate in the accommodation process and that the School Board was justified in not returning him to work right away.

Take Aways for Employers

When managing an employee's medical absence, if the information provided by the employee's doctor is not enough to return him or her safely to work, an employer should ask for more information relating to the medical restrictions and limitations of the employee. In the non-unionized setting, this means that in certain limited cases the employer will be within its right to request that the employee submit to an IME by a doctor of the employer's choosing as part of the accommodation process. In the unionized setting, the employers' right to an IME can also be written into the collective agreement to ensure such a right.

That said, it is very important for employers to provide adequate information about an employee's position and duties to the treating physician so that he or she can appropriately determine and report on the employee's restrictions and limitations.

a) Finally, employers should be mindful of what they communicate to independent medical examiners so as not to impair the objectivity of the assessment. If not careful, the employer may sabotage its duty to accommodate by improperly colouring the examiner's view of the employee's condition. In such cases, an employee would be justified in refusing to attend the IME.

Andrew Carricato

Duty to Accommodate Cocaine Addicts

Case Comment: *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30

A majority of the Supreme Court of Canada has recently upheld a decision of the Alberta Human Rights Tribunal which determined that an employer, the *Elk Valley* Coal Corporation, was justified in terminating a cocaine-addicted employee for breach of its drug and alcohol policy. The Tribunal ruled that the employee had not been terminated because of his addiction (which would have been discriminatory), but because he breached the policy, which required him to disclose a drug or alcohol dependency before a workplace accident in order to avoid termination. The background facts of the case as well as some of the implications of the case for employers are discussed below.

Background facts

The employee worked in a mine operated by the employer, driving a loader. Given its interest in ensuring a safe worksite, the employer had implemented an Alcohol, Illegal Drugs & Medical Policy which required employees to disclose any dependence or addiction issues before any drug-related incident occurred in the workplace. If employees disclosed their dependency or addiction, they would be offered treatment. If they failed to disclosure a dependency and were involved in an incident and then tested positive for drugs, they would be terminated. The employee in question used cocaine on his days off, but did not disclose his cocaine use to his employer. One day, near the end of a 12-hour shift, his loader was involved in an accident. After he tested positive for drugs, the employee disclosed his cocaine addiction to the employer. The employer terminated him nine days later in accordance with policy. The employee filed a complaint with the Alberta Human Rights Tribunal, arguing that his employer had discriminated against him on the basis of disability.

Decision

The Alberta Human Rights Tribunal upheld the termination. It concluded that the employee was

addicted to drugs and that his addiction constituted a disability which was entitled to protection under the law. The Tribunal also concluded that the employee's termination constituted adverse treatment by the employer. However, it concluded that the disability was not a factor in the termination. Rather, it determined that the employee had been terminated for failing to comply with the policy. As a result, there was no *prima facie* discrimination by the employer.

A majority of the Supreme Court of Canada upheld the Tribunal's determination. The majority stated that it was clear that there was evidence capable of supporting the Tribunal's conclusion that the reason for the termination was not addiction, but breach of the Policy. As a result, the majority held that it was not unreasonable for the Tribunal to have concluded that there was no *prima facie* discrimination by the employer.

Implications for Employers

The *Elk Valley* case upholds the proposition that breach of an employer policy can justify termination, provided certain criteria are met. The employer had adopted its policy to meet the important objective of ensuring safety in the mine. All employees attended a training session at which the policy was reviewed and explained. All employees also signed a form acknowledging receipt and their understanding of the policy. These were important factors for the employer to establish in seeking to rely on the policy to justify the termination. Employers must also ensure that policies are clear and unequivocal and that employees have been warned of the consequences of breach.

While the case emphasizes the importance of compliance with workplace policies, it is important to note that it does *not* change the law regarding the test for discrimination or the law regarding the duty to accommodate disabilities. To make a case of prima facie discrimination, employees must show that they have a characteristic protected from discrimination under human rights legislation, that they experienced adverse impact in employment and that the protected characteristic was a factor in the adverse treatment. The majority of the Supreme Court expressly rejected arguments that the test should be altered, so as to add a fourth requirement in to establish a *prima facie* case of discrimination and to require employees to establish that the protected ground was a "significant" or "material" factor in the discrimination, rather than just "a factor". Although the employee failed to satisfy the three-step test in this case, the outcome largely turned on the Tribunal's finding that he was able to make choices about his drug use and therefore did have the capacity to comply with the employer's policy but chose not to. On a different set of facts, a *prima facie* case of discrimination may well have been established.

Given that the case does not narrow the protections that employees are entitled to under the law, employers continue to be encouraged to seek legal advice to ensure that policies with human rights implications would withstand legal scrutiny.

Marisa Cruickshank

Local governments and the UN Declaration

In May 2016, Canada finally joined the rest of the United Nations and announced its unqualified endorsement of the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration"). More recently, the government of British Columbia endorsed the UN Declaration on September 6th, 2017.

Adoption of the UN Declaration is a foundational step on the path to achieving reconciliation with indigenous people across British Columbia and Canada. The historic Truth and Reconciliation Commission made it a key recommendation:

We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation. (Call to Action No. 43, emphasis added)

The UN Declaration establishes a global rights-based framework for the "survival, dignity and well-being" of 370 million indigenous people, setting out, for example, under Article 3:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Other articles in the UN Declaration spell out the right of indigenous people to be free and equal to all other people, free from discrimination, to have a nationality, to have protection from assimilation, genocide, and destruction of their culture, and to have distinct political, legal, economic, social and cultural institutions within society as whole.

And under Article 26:

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired

In short, the UN Declaration seeks to ensure indigenous peoples have the same rights and freedoms as those enjoyed by non-indigenous people.

Bringing federal and provincial government policies, programs and legislation into compliance with the UN Declaration will require a paradigm shift. Every area of government will be impacted to a greater or lesser extent including education, health care, social services, environment and housing. As Premier Horgan quipped, "Will it be easy?" he said near the end of a 2016 speech. "No. Reconciliation is not for wimps."

Modern day treaties offer one path to compliance with the UN Declaration. The Tla'amin First Nation, Maa-nulth First Nations, Tsawwassen First Nation, and the Nisga'a treaties are indicative of the complexity and wide breadth of topic areas that need to be addressed.

Full implementation of the UN Declaration will necessarily transform the economic development of lands, territories and resources traditionally owned, occupied, and used by BC's indigenous peoples. In the future, projects such as the Kinder Morgan Trans Mountain pipeline and the Site C dam are unlikely to proceed as before over the objections of adversely impacted First Nations.

While a veto over development on traditional indigenous lands is not likely – the UN Declaration's principles are to be applied in a manner consistent with Canadian law – seeking the consent of indigenous peoples should no longer be the exception by virtue of Article 32 (2):

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

With the federal and provincial governments taking the first tentative steps toward engagement with BC indigenous peoples based on the UN Declaration, the usage of words like "collaborative consent", "co-management", and

"consensus" are likely to become more common in British Columbia.

For Local Governments this is a welcome change. Local Governments are less likely to be caught in the middle of confrontations between the federal/provincial governments and First Nations when there is a true good faith effort to achieve interest-based reconciliation - prior to, not after - senior government development approvals.

Many Local Governments are already on the path of reconciliation by building relationships with First Nations based on honesty, respect and interest-based decision making. As the level of government that most directly impacts community members' daily lives, now would be the time for Local Governments to endorse this human rights commitment by formally adopting the UN Declaration.

For the full text of the UN Declaration go to:

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

Rob Botterell

First Nation Consultation: Where We Are At

In 2014, the National Energy Board (NEB) approved an application to modify an oil pipeline in Eastern Canada, and authorized seismic exploration for oil and gas off the coast of Nunavut. Both approvals were challenged by Aboriginal groups who felt that the Crown did not fulfill its duty to consult. Both cases went to the Supreme Court of Canada (SCC). On July 26, 2017 the SCC rendered its decisions in Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2017 SCC 41 and Clyde River (Hamlet) v. Petroleum Geo-Services Inc., 2017 SCC 40.

The phrase "duty to consult" refers to the Crown's duty to engage Aboriginal peoples when making decisions that may adversely affect their rights. In Chippewas and Clyde River, the SCC ruled that the NEB approvals may trigger the Crown's duty to consult, and the Crown may rely on the NEB to carry out consultation. But, consultation must be sufficient before the NEB makes a final decision. In Chippewas, the SCC found consultation to be sufficient; in Clyde River – not so much. Let's examine the differences.

Chippewas of the Thames

In 1976, Interprovincial Pipe Line Ltd., now known as Enbridge, built a crude oil pipeline, known as Line 9, from Sarnia to Montreal. Line 9 cut through the Chippewas traditional territory and crossed the Thames River. The Chippewas were not consulted.

In 2012, Enbridge applied to the NEB to modify Line 9, reversing the flow in a portion of the pipeline (known as Line 9B), increasing capacity, and allowing transport of heavy crude. In December 2012, the NEB started the project assessment, including a public hearing. The Chippewas worried that a crude oil spill would damage the land and the Thames River.

The Chippewas participated in the NEB's public hearing, but wrote to the Prime Minister that there had been no Crown consultation. In January 2014, after the NEB public hearing was over, the Minister of Natural Resource advised the Chippewas that the government would rely on the NEB to consult with the First Nations (i.e., there would be no further consultation).

The NEB approved the project. The Chippewas appealed to the Federal Court of Appeal arguing that the NEB had no authority to approve the project due to lack of consultation. The Chippewas lost the argument and further appealed to the SCC.

The SCC ruled that the Crown had to consult the Chippewas, and did so as part of the NEB's public hearing. Consultation was "manifestly adequate".

The Chippewas had early notice of public hearing, were able to participate in the public hearing, had funding to prepare and tender evidence (including expert evidence), posed information requests to Enbridge and made closing submissions. The project was within an existing pipeline right-of-way and no additional Crown land was required. Despite finding that the adverse impact of the project was minimal, the NEB required Enbridge to mitigate the risk of spills and to continue consulting with the Chippewas.

Hamlet of Clyde River

In 2011, a group of companies applied to the NEB to conduct off-shore seismic testing for oil and gas in Baffin Bay and Davis Strait. The testing was to run from July to November, for five years, in an area used by the Inuit of Clyde River for harvesting marine mammals—a practice protected by treaty. When residents of Clyde River asked about the potential impact, the companies responded with vague and empty statements.

In 2013, the companies produced a 3,926 page report purporting to answer Clyde River's questions. Only a portion of the document was in Inuktitut and no effort was made to follow up with the community. Clyde River wrote to the NEB and to the government that they had not been consulted, and asked that a strategic environmental assessment be done before approval. The government and the NEB refused and the project was approved.

Clyde River appealed the NEB decision to the Federal Court of Appeal, lost, and further appealed to the SCC.

At the SCC, the Crown acknowledged that there had to be "deep consultation": Clyde River residents relied on marine mammals, and the project could injure, kill or drive the mammals away. The SCC ruled that "deep consultation" did not happen. The NEB looked into the impact of the project on the environment, but not on the treaty rights. The Crown did not advise Clyde River that it would be relying on the NEB to fulfill its duty to consult. To contrast with the Chippewas, there were no oral hearings, no participant funding, no final arguments. The companies could not answer the residents' questions and the 3,926-page clarification report was "practically inaccessible" (Internet is low in Nunavut and the report was not fully translated into Inuktitut).

The takeaway

The duty to consult remains with the Crown – the state of Canada – but, may be triggered by a decision of a regulatory body, for example the NEB. The Crown may rely on the regulatory body to consult, but may have to take additional measures if consultation is not sufficient. For instance, the NEB's public hearing process – which includes notice, evidence, information requests and an argument – may be sufficient to fulfill the duty to consult. A less involved process may not be enough.

Does this mean that the government needs to oversee what the NEB and other regulatory bodies are doing? Make submissions to the regulatory body? Get involved in the process somehow? Possibly. The SCC leaves this to a "case-by-case" basis.

Olga Rivkin

Defamation and managing online forums

Local governments may have concerns when faced with defamatory material posted on online forums they administer. In certain circumstances, failing to remove defamatory material posted by third parties can give rise to liability. Recent decisions provide guidance on navigating this tricky issue.

Defamation

The test for defamation has been well-established in case law. In order to recover in an action for defamation, the plaintiff must show:

1) That the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;

2) That the words in fact referred to the plaintiff; and

3) That the words were published.

[*Grant v. Torstar*, 2009 SCC 61]

In *Lawson v. Baines*, 2012 BCCA 117, the Court of Appeal determined that there are three alternate means by which defamation can be proven (at para. 13):

a) if the literal meaning of the words complained of are defamatory;

b) if the words complained of are not defamatory in their natural and ordinary meaning, but their meaning based upon extrinsic circumstances unique to certain readers (the "legal" or "true" innuendo meaning) is defamatory; or

c) if the inferential meaning or impression left by the words complained of is defamatory (the "false" or "popular" innuendo meaning).

Publishing Defamatory Material

One of the leading Supreme Court of Canada cases on defamation, *Hill v. the Church of Scientology* of Toronto, [1995] 2 SCR 1130, at para. 176, states

It is a well-established principle that all persons who are involved in the commission of a joint tort are jointly and severally liable for the damages caused by that tort. If one person writes a libel, another repeats it, and a third approves what is written, they all have made the defamatory libel. Both the person who originally utters the defamatory statement, and the individual who expresses agreement with it, are liable for the injury.

Therefore, an individual can be liable for repeating, or republishing, a defamatory libel. However, a defendant in a subordinate publisher role can avail itself of the defence of innocent dissemination by showing that it:

1. had no actual knowledge of an alleged libel;

2. is aware of no circumstances to put it on notice to suspect a libel; and

3. committed no negligence in failing to find out about the libel.

[*Crookes* at para. 20; *Niemela* at para. 97]

Defamation, the Internet, and Social Media

The law of defamation is still evolving with respect to how it responds to the Internet and, in particular, social media. In *Crookes v Newton*, 2011 SCC 47, the Supreme Court of Canada ruled that publishing a hyperlink to defamatory material does not make one liable for defamation, because hyperlinking to material does not count as publishing that material.

After the decision in *Crookes*, the Ontario Supreme Court in *Baglow v. Smith*, 2015 ONSC 1175 ruled that the moderator of an online forum can be held liable for defamation based on having 'published' the words.

Following *Baglow*, the Alberta court of Queen's Bench, in *Kent v Postmedia Network Inc*, 2015 ABQB 461, held that *Baglow* provided a narrow exception to the decision in Crooks and that "a failure to remove defamatory information will result in liability only in circumstances in which it was a deliberate act" (at para. 54).

Weaver v. Corcoran, 2015 BCSC 165 (reversed on other grounds: *Weaver v. Corcoran*, 2017 BCCA 160) arose following the posting of reader comments on an internet site. The Court found that "there is no real dispute that some of the reader comments are defamatory. Indeed, the evidence was that some of these comments were

removed because of that complaint. I have reviewed the comments and concluded, in any event, that many were defamatory clearly attacking the plaintiff's character in a vitriolic manner" (at para. 268). The Court went on to find that "Once the defendants became aware of the comments in the reader postings and received a complaint, they were then taken down. The volume of postings is such it would not be realistic to expect the defendant to pre-vet every posting" (at para. 273). The Court concluded that "Due to the prompt removal of the offending reader comments once known to the defendants, I have concluded the defendants are not publishers of the reader postings. Accordingly, I do not need to deal with the defence of innocent dissemination or fair comment" (at para. 287).

In, *Niemela v. Malamas*, 2015 BCSC 1024, Justice Fenlon considered whether publishing "snippets" of defamatory material resulted in liability for having published the material. She found that being the publisher of defamatory requires more than being a passive instrument: "In summary on this issue, I conclude that Google is a passive instrument and not a publisher of snippets. There is accordingly no issue for trial in relation to defamation" (at para. 107). Google had blocked the offensive URLs once the issue was drawn to its attention.

In *Pritchard v. Van Nes*, 2016 BCSC 686, two neighbours became involved in various disputes that led to one neighbour posting comments on social media that implied that her neighbour was a paedophile. Various online 'friends' chimed in with comments and the rumour spread to the extent that it affected the plaintiff's career. After considering the authorities, the Court arrived at the following test to establish liability resulting from third-party defamatory material:

1) actual knowledge of the defamatory material posted by the third party,

2) a deliberate act that can include inaction in the face of actual knowledge, and

3) power and control over the defamatory content. After meeting these elements, it may be said that a defendant has adopted the third party defamatory material as their own [at para. 108].

In *Pritchard*, the court held that the defendant had her Facebook page under "if not continuous, then at least constant viewing." The Court determined that the defendant had an obligation to delete defamatory comments posted on her Facebook page "within a reasonable time – a 'reasonable time', given the gravity of the defamatory remarks and the ease with which deletion could be accomplished, being immediately" (109). *Pritchard* demonstrates that the courts will accept that defamation by third parties on social media can be a serious issue and are willing to impose liability on that basis.

The authorities suggest that while a forum moderator is not expected to be omniscient, defamatory content should be quickly removed once it has been identified and drawn to the attention of the forum moderator. Failure to remove defamatory content once a local government has knowledge of its existence may give rise to liability.

Robin Phillips

LIDSTONE & COMPANY
LOCAL GOVERNMENT LAWYERS

Annual Client Seminar

Friday, November 3, 2017

8:30 am – 4:30 pm

Waterfront Hotel, Vancouver

CLIENTS RSVP:

chand@lidstone.ca

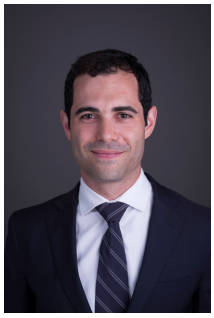
Lidstone & Company Lawyers

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 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 Master's 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.

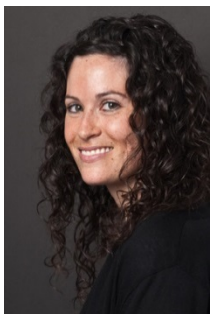
Rob Botterell focuses on major project negotiations for local governments (such as in relation to pipelines, LNG, dams and reservoirs, mines, oil and gas, and similar matters). He also deals with law drafting as well as local government matters in relation to aboriginal and resource law. Rob also advocates 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.

Susan Trylinski is Associate Counsel at Lidstone and Company, located in Calgary, Alberta. While Susan has over 18 years of experience in municipal law, she first started her career in litigation at major Calgary law firms. She now primarily does board work (with related litigation to the Court of Queen's Bench and Court of Appeal) and advises on administrative law issues, municipal taxation, statutory interpretation and a variety of municipal law issues including enforcement, environmental legislation, historical resources, duties of councillors and planning and development. Susan is also called as a solicitor in the state of New South Wales, Australia.



Andrew Carricato joined Lidstone & Company in September 2017. He began his legal career with one of Canada's pre-eminent labour and employment law groups on Bay Street before moving to a boutique firm repeatedly recognized as one of the best in Canada where he advocated on behalf of employees and employers alike. Andrew advises and advocates for clients on a wide range of workplace law issues in both unionized and non-unionized environments. He advises on recruitment, discipline, terminations, attendance and disability management, accommodation, workplace investigations, human rights, freedom of information and privacy matters, as well as labour relations, the interpretation of collective agreements and grievance arbitrations. Andrew completed his law degree from the University of Ottawa's French Common Law Program.

Don Lidstone Q.C. practices generally in the area of local government law. His municipal law focus is in the areas of governance, finance and taxation, land use and development, environmental law, aboriginal law and bylaw/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.

Olga Rivkin, a former partner in the local government department of a national law firm, has joined Lidstone & Company as a senior associate lawyer. She advises municipalities and regional districts on a variety of topics, including aboriginal law, land development, subdivision, real estate, highways, remediation, water, infrastructure, governance and operations. Olga has represented local governments across British Columbia in numerous negotiations, drafted a variety of agreements and assisted with project management.

Robin Phillips joined Lidstone and Company as an associate lawyer after completing a clerkship with five judges of the Supreme Court of British Columbia. She was called to the BC Bar in 2016. Robin received her J.D. from the University of British Columbia, where she was awarded several awards for academic excellence, including the Barbara Bluman Memorial Prize in Dispute Resolution and the Bruce McColl Memorial Prize in Alternate Dispute Resolution. Robin is also a mediator, having completed the court mediation program through Mediate BC.

Rachel Vallance provides legal opinions, agreements and bylaws on all local government matters. She completed her degree at the Unversity of Victoria, where she participated in the law co-op program. Rachel has woked at the Ontario Securities Commission in Toronto, The Ministry of Justice in Victoria, Chimo Community Services in Richmond, and Chandler & Thong-Ek, a business law firm with offices in Thailand and Myanmar. During law school, Rachel received awards both for academic performance and involvement in student affairs. Prior to her law degree, Rachel completed an Honours BSc in Psychology and Ethics, Society & Law at the University of Toronto.

Robert Sroka provides legal opinions and drafts agreements on all local government matters with an active interest in land use planning and real estate development. Robert came to Lidstone & Company from The City of Calgary Law Department, where he served as a bylaw prosecutor, drafted real estate transactions, and advised on planning issues. Robert obtained his JD from The University of British Columbia and spent two summers as an Ottawa intern in the offices of federal cabinet ministers. He is currently a PhD (Law) Candidate. His work on urban brownfield redevelopment financing has been presented at several law conferences.

Ian Moore is Lidstone & Company's articling student. He is a graduate of Queen's University's joint law-public administration program. While at Queen's he co-founded the student newspaper *Juris Diction* and sat on the executive committee of the Law Students' Society for two years. Prior to law school he lived in Edmonton and worked on a number of municipal initiatives, including the City of Edmonton's energy, food, and environmental strategies.

LIDSTONE & COMPANY *acts primarily for local governments in BC and Alberta. The firm also acts for entities that serve special local government purposes, including 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.*