LIDSTONE & COMPANY

Law Letter

In this issue

Getting Ready for Autonomous Vehicles

The autonomous vehicle is transformative technology. The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) defines autonomous driving system vehicles (ADS) as those in which operation of the vehicle occurs without direct driver input to control the steering, acceleration, and braking. Fully autonomous vehicles perform all driving functions under all conditions.

Municipalities (and the Province) will have to resolve key liability, regulatory, planning, engineering and budgeting issues to accommodate the massive market for driverless vehicles. Fully automated and nationally certified vehicles will be on the road in numbers before 2022. NVIDIA has already developed a beta chip circuit and board that an auto industry brand may utilize under licence, and Tesla and Toyota expect to be approved by 2021. Municipalities will have to ramp up in many areas, and must deal with the awkward transition period of about ten years when driverless vehicles will share the road with vehicles piloted by humans. For example, "autonomous only" zones will be created around high-traffic areas.

Fully automated and connected driverless vehicles will usher in a time when there are virtually no accidents, existing and future off street and on street parking requirements will be substantially reduced, disabled and aged persons will have greater mobility, commute times and congestion will be halved initially, and transportation emissions will be reduced. ADS cars can travel close together and at higher speeds. General Motors predicts the cost of an ADS ride will be cut by more than one half compared to current costs of operating or using vehicles.

British Columbians have been familiar with ADS technology since 1985 when the first cars were

introduced on the SkyTrain guiderail system. The difference between SkyTrain and driverless vehicles is the fact that the latter will take over our highways, interfacing with all the other driverless vehicles at intersections, when passing or changing lanes, or when dropping off or picking up passengers.

At this time, it appears there will be at least five classes of ADS vehicles: public transportation (driverless buses and vans), ride hailing services, car sharing, service/delivery vehicles (including door to door delivery of online purchases), and the private "automobile". Given the accessibility and cost of travelling in public or ride hailing services, and the predicted ability of an occupant to customize destinations and things like routes, workspaces and infotainment during each trip, it is anticipated that less people will own private automobiles. University of Michigan researchers predict reduction of car ownership by up to 43 per cent. Others predict more "rides" ultimately, as the aged and disabled get out more, online purchases get delivered and people generally prefer being chauffeured.

Every municipality will face additional costs, increased staffing or consultancies, continuing education of existing staff, and a substantial investment in cyber security and system upgrades to keep up with daily changes in ADS technology. Currently, numerous entities are racing to study and develop sensors, municipal mapping, inter-vehicular "communications", and vehicle energy/spacing/speed algorithms, yet municipalities are collectively or individually doing very little despite the onslaught of ADS vehicles within five years.

Autonomous vehicles constitute one area where it makes little sense to have a patchwork of unique regulations from one municipality to the next. Although Cambridge and Watertown, both in Massachusetts, are pioneering local "driverless" regulations, their regs are distinctly different from each other. BC's laughably archaic *Motor Vehicle Act* will need absolute overhauling. Ontario is currently licencing entities to test driverless vehicles, and Alberta is close behind. Calgary and Waterloo have initiated programs. In the US, at least 17 states permit autonomous vehicle testing, with substantial testing every day by thousands of vehicles in California and Arizona. In Michigan, a national pizza company is testing driverless deliveries (in vehicles, not by drones).

The municipal risk management focus will change from the design, installation or maintenance of stop signs and traffic signals to the procurement,

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installation and upgrading of computer systems that communicate with ADS vehicles at intersections, at crosswalks, in lanes, for driveway or parking lot access, and that prioritize trips (emergency vehicles getting top priority). Based on current testing, mere line painting will have to be replaced with new road design and lane and intersection control communications from municipal systems. Already in 2018 the stage-three autopilot shuts down if the driver merely take the hands off the wheel three times on any trip, so consider how powerful the municipal software and infrastructure will be in relation to speeding governors, lane change permissions, pedestrian/bike avoidance, stopping, or parking. Municipalities or regions or the Province will have to regulate inter-vehicle communication, vehicle to road communication, transit, ride-sharing or ride-hailing, and to enact local "meet or beat" regs where federal or provincial laws leave constitutional room.

Considering how routinely current email and other computer applications crash or freeze, municipalities will have to spend money and hire expertise to ensure that public safety is not put at risk by system failures or cyber-attacks.

Municipal budgeting will be impacted. Revenue from parking, moving violations, vehicle levies, gas tax, and towing will be substantially eliminated by 2025. Taxi licencing revenue will decline. Policing and bylaw enforcement costs will be significantly reduced: imagine municipal rules of the road being policed by overarching routine municipal computerized communications with vehicles instead of by motorcycle police or bylaw enforcement officers with chalk sticks. Municipalities will be able to get revenue from public charging stations once most vehicles are propelled by electricity, and from smart tolling and private carrier fees.

After dealing with the piloted automobile for a century and a half, municipal planning will have to be inventive and adaptive to keep up with the changes that are coming: drop-off spaces instead of parking, changing parkades into other uses, more distant commutes occasioned by speedier vehicles spaced closely without congestion, density driven by mass transit and app-driven ride-sharing or ride-hailing, block-by-block charging stations, and the sudden disappearance of car dealers, gas stations, and suburban shopping centres.

Ultimately, local government measures will have to be developed as policies rather than

operational decisions in order to help address liability concerns, and implementation will have to strictly comply with policies. The governmental computer system intrusions into an individual's location, travel patterns, interactions and other things will have to be reconciled with protection of

personal privacy. On the other hand, personal safety will be a key advantage of driverless highways: WHO estimates over 1.5 million traffic deaths per year worldwide currently, and the financial implications of injuries to society are immeasurable. In driverless vehicles, people will be able to drink, text, watch films, play car racing video games, or virtually anything but drive distractedly.

Don Lidstone, Q.C.

Employee resignations: can they be rescinded by the employee?

"THAT'S IT! I QUIT!" ("Actually, maybe not…")

It's a common scene in the movies: a disgruntled employee tells off the boss and then triumphantly departs the office, throwing papers in the air, vowing never to return. (If you can't recall one, just google, "top 20 best job quitting movie scenes" and you'll find results, with video links.) Of course, not all resignations play out with such dramatic flair. In some cases, an employer may be genuinely confused about whether an employee actually intended to resign. In other cases, the employer may take the position that the employee voluntarily quit, while the employee may maintain that he or she was fired without notice. Whatever the circumstances, it is important for employers to be aware of the law regarding resignations, including when employees may be entitled to rescind them.

The general rule is that a voluntary resignation by an employee must be clear and unequivocal to be effective. In *Beggs v. Westport Foods Ltd*., 2011 BCCA 76, the BC Court of Appeal stated that a finding of resignation requires the application of both a subjective and objective test: whether the employee intended to resign and whether the employee's words and acts, objectively viewed, support a finding that he or she resigned. The objective portion of the test focuses on what a "reasonable employer" would have thought about the employee's intentions, based on what the employee has done or said. The subjective aspect of the test takes into account the employee's state of mind, ambiguities in relation to the conduct which is alleged to constitute "resignation" and, to a certain degree, the employee's timely retraction or attempted retraction of the "resignation".

Generally, the more impulsive or emotionally charged a resignation is, the greater the onus on the employer not to accept the resignation without proper deliberation. For example, in *Haftbaradaran v. St. Hubertus Estate Winery*, 2011 BCSC 1424, within the context of an emotionally charged meeting (which followed months of building resentment by the employee and subjective feelings of being undervalued), the plaintiff – a winemaker at the employer's winery – took his keys to the wine cellar out of his pocket, laid them on his employer's desk, and essentially invited his employer to fire him.

The general rule is that a voluntary resignation by an employee must be clear and unequivocal to be effective

The employer told the employee to get out of his office, to which the employee responded, "Good luck making wine". The employee subsequently gathered his personal effects from his space in the wine cellar and left the property. The court concluded that the plaintiff's behavior in the meeting was part of a strategy to induce the employer to be more effusive in its praise of the plaintiff, rather than an unequivocal resignation. The court noted that while leaving the property showed extremely poor judgment on the plaintiff's part, a reasonable observer would conclude that this action was just another element of the plaintiff's strategy. As a result, the court concluded that the plaintiff's words and actions did not amount to an unequivocal expression of resignation from his employment.

Similarly, in *Upcott v. Savaria Concord Lifts Inc*., 2009 CanLii 41348 (Ont S.C.), during a meeting with the employer's Director of HR to address an earlier altercation between the plaintiff and another employee (Leanne), the plaintiff became fed up, either said, "I'm done" or "I'm out here", and threw his keys in the Director's in-box. The plaintiff subsequently encountered the employer's VP of Operations and stated, "I'm done; please call me when they solve the problem with Leanne."

The plaintiff then went to this office, took his personal items off his desk and went to his car. He took two trips from his office to the car. He passed the receptionist on his second trip out and told her he was "done" and would call her later. Within half an hour, the plaintiff's emails had been deleted from his blackberry, which he understood to be part of the termination process. He later spoke to the Director of HR and the VP of Operations on the phone, during which time they advised him that they were taking his conduct as a resignation.

The court considered whether the employee was justified in accepting the plaintiff's apparent resignation or whether it should have allowed him to come back to work. The court acknowledged that the employee, in a foolish fit of anger, had made it clear to the employer on the morning of the altercation and for a short time after that he truly wished to leave his employment. However, the court considered the fact that the plaintiff's workload had been increased that morning, an important project had been delayed, he'd had an argument with a co-worker and the co-worker had subsequently complained about him. Ultimately, the court concluded that a reasonable person, viewing the matter objectively, would have understood that the plaintiff was having a juvenile fit of anger and would, very quickly after leaving the office, have retracted the resignation.

Even in cases where consideration of both the subjective and objective components supports a conclusion that the employee intended to quit, the courts give employees some leeway in retracting resignations. Generally, employees must be permitted to rescind a resignation unless the employer has acted on the resignation to its detriment: *Tolman v. Germatic Company*, 1986 CanLii 1212 (BCCA). For example, if the employer has already hired someone new to fill a position, it may be able to maintain its acceptance of the resignation. Otherwise, and particularly in emotionally charged circumstances, the courts identify that the most reasonable and fair response might be to provide some time for the parties to cool off, gather their thoughts and re-consider the situation: *Bru v. AGM Enterprises Inc.*, 2008 BCSC 1680.

If you aren't sure whether an employee has resigned or you suspect that an employee may have acted in the heat of the moment, take some time to consider the entirety of the circumstances. If you are aware of factors that may have led the employee to impulsively resign, such as workplace stress or a workplace altercation, give the employee some time to cool off. After a cooling off period, we usually recommend that you attempt to confirm with the employee in writing whether or not he or she intended to resign. As the case law makes clear, you don't want to be seen to be forcing a resignation upon an employee in circumstances where there may be no subjective intention to do so. Moreover, if an employee comes back within a reasonable period of time and asks to rescind his or her resignation, consider whether you have already acted on the resignation or whether you would reasonably be expected to allow the employee to return to the workplace.

Marisa Cruickshank

Can workplace human rights discrimination be perpetrated by someone other than complainant's employer?

Landmark Human Rights Decision: Discrimination of your employee by an individual that is not your employee may now be your problem

Against the current *#MeToo* backdrop, the Supreme Court of Canada ("SCC") issued a landmark decision on December 15, 2017 that expanded the protection of human rights at work beyond the traditional employer-employee relationship.

In the decision of *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, the SCC concluded that the scope of BC's Human Rights Code ("Code") is broad enough to protect employees from harassment and discrimination perpetrated by co-workers that are employed by different employers.

Quick Summary

This case is interesting because it was about whether the BC Human Rights Tribunal ("Tribunal") had jurisdiction to hear a complaint made by an employee of one employer against the employee of another.

This decision reaffirms the importance of ensuring employees are free from discrimination not only from direct superiors and co-workers but also contractors or others who are not employees of the local government

The complainant, Mr. Sheikhzadeh-Mashgoul ("SM"), an Iranian-born Muslim man and civil engineer was employed by Omega & Associates Engineering ("Omega"). The Respondent, Mr. Schrenk, worked with SM on a construction project for the City of Delta. Schrenk was the site foreman on the project but was employed by a different employer, Clemas Contracting Ltd. ("Clemas"). SM and Schrenk were not in a formal employment relationship with each other, nor did one supervise the other.

SM alleged that between September 2013 and January 2014, while on the construction site, Schrenk made disparaging comments to SM about his place of origin, religion and perceived sexual orientation. When it was brought to their attention, Omega and Delta asked Clemas to remove Schrenk from the work site, which it did. Schrenk, however, continued to work on the project off-site and continued to harass SM by sending him inappropriate emails. SM complained again and Schrenk's employment was terminated shortly thereafter.

The Complaint

SM subsequently filed a complaint with the Tribunal against Schrenk and Clemas alleging they discriminated against him in the course of his employment. Both Schrenk and Clemas applied to dismiss the complaint on the basis that they were not in an employment relationship with SM, and therefore the Tribunal had no jurisdiction. The Tribunal disagreed, finding that it would be contrary to the spirit and purpose of the Code to exclude employees who shared a common worksite from its protections simply because the perpetrator of the discriminatory behaviour worked for another employer. The decision was upheld by BC's Supreme Court on judicial review. The Court of Appeal, however, overturned the decision on appeal and decided that the Tribunal did not have jurisdiction.

The Decision

Our highest Court considered whether section 13 of the Code applied to the relationship between two individuals sharing a workplace, but working for different employers. Using a contextual and holistic approach, the majority held that "s. 13(1)(b) of the Code prohibits discrimination against employees whenever that discrimination has a sufficient nexus with the employment context."

The SCC stated that "while the person in control of the complainant's employment may be primarily responsible for ensuring a discrimination-free workplace […] it does not follow that only a person who is in a relationship of control and dependence with the complainant is responsible for achieving the aims of the Code. Rather, the aspirational purposes of the Code require that individual perpetrators of discrimination be held accountable for their actions." As a result, so long as there is a sufficient nexus between the discriminatory conduct and the circumstances of his or her employment the complainant may bring a human rights complaint against the individual perpetrator of discriminatory conduct no matter their identity. In considering whether there is a sufficient nexus, a Court will consider the following non-exhaustive factors:

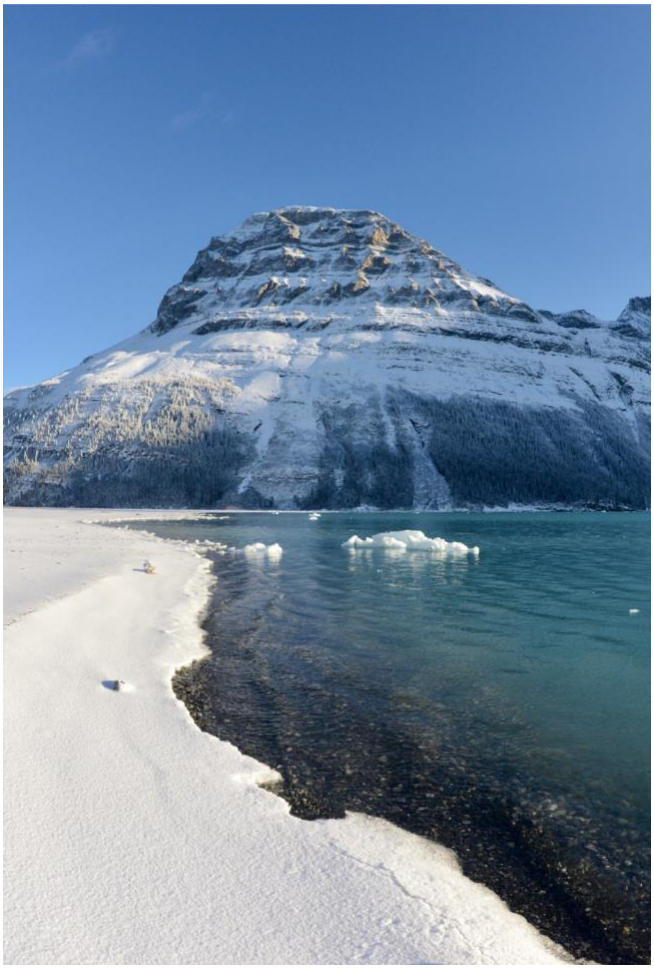
1. whether the perpetrator was integral to the complainant's workplace;

2. whether the discrimination occurred in the complainant's workplace; and

3. whether the complainant's work performance or work environment was negatively affected.

What This Means for Employers

This decision is a reflection of the realities of modern workplaces which are not always clearly defined. The SCC has broadened the scope of human rights complaints that employees can make with respect to workplace discrimination and harassment under the Code and has reaffirmed that the Code must be read liberally, broadly and consistent with its remedial purpose. This more expansive interpretation means that a complainant with whom you may have no employment relationship may name the municipality in an employment related complaint so long as there is a sufficient connection to his or her employment.



While the decision does not expressly say so, it also raises the question of whether employees of the municipality can bring complaints of discrimination and harassment against third-parties, such as members of the public, if they are subjected to discriminatory or harassing behaviour in carrying out their duties.

In sum, this decision reaffirms the importance of ensuring that employees are free from discrimination not only from their direct superiors

and co-workers but also contractors or others who are not employees of the municipality, such as members of the public or third-parties they may work with, in the context of their employment.

It also serves as an important reminder to all municipalities to ensure they have proper policies and procedures for dealing with incidents and complaints of workplace discrimination and harassment. Existing policies and procedures should also be expanded, if not already, to include the prohibition of any inappropriate conduct between employees, elected officials and anyone who comes in contact with them, such as members of the public, in the carrying out of their employment.

Andrew Carricato

Election Readiness: BC 2018

As a result of statutory amendments following the 2014 election, general local elections in British Columbia are now held every four years (as opposed to every three years), on the third Saturday in October. The next general local election in British Columbia will be held on Saturday October 20, 2018.

We have outlined a few of the more significant legislative changes and important dates to be aware of as local governments begin their election preparation.

Appointment of election officials

Administration of local elections remains the responsibility of chief election officers who are appointed independently by each local government pursuant to s. 58 of the LGA. We generally recommend that our clients make this appointment early in the year of a general election to ensure that the chief election officer has sufficient time to appoint and train other necessary election officials, book voting places, make recommendations to the board or council regarding election procedures and the content of election bylaws, and fulfill other statutory duties.

New campaign finance rules

In 2017, the provincial government introduced amendments to the campaign finance provisions of the Local Elections Campaign Financing Act ("LECFA") to mirror provisions at the provincial level. Some of the more notable amendments are as follows:

Only "eligible individuals" can make campaign contributions. "Eligible individual" is defined in LECFA to mean an individual who is a resident in British Columbia and is a Canadian citizen or a permanent resident.

Campaign contributions from organizations (including corporations and unions) and other individuals are now prohibited.

The Act imposes new limits on campaign contributions and loans for campaign use. For example, eligible individuals may make contributions of up to $1,200 per year per campaign to unendorsed candidates or $1,200 in total to each campaign of an elector organization and its endorsed candidates. The onus is on both the individual making the contribution and financial agent for the candidate or elector organization to ensure these limits are respected.

In addition to the foregoing, campaign period expense limits were introduced to LECFA in 2016.

Since the 2014 general election, amendments have also been made to the election advertising provisions of LECFA, including the rules regarding sponsorship of election advertising and contributions to third parties for use in election advertising. In 2016, Elections BC confirmed that messages with no placement costs that are placed on the internet (such as on Facebook, Twitter, YouTube, websites or sent by e-mail) do not constitute election advertising.

Given the complexity of these requirements, we recommend that staff direct inquiries regarding campaign financing and election advertising to Elections BC. Elections BC is responsible for administering the campaign financing and election advertising requirements in LECFA and has published a number of helpful resources on these topics.

Chief Elections Officers should also note the requirements under LECFA and the LGA for providing specified information to Elections BC.

Important election dates

January 1, 2018: Election period begins (ends September 21, 2018). This is relevant for the calculation of election period expenses.

May 31, 2018: Expense limits must be made public by Elections BC on its website.

July 9, 2018: Final day for local governments to adopt bylaws or bylaw amendments that will apply to the general local election. Note that some bylaw provisions (such as those authorizing special automated voting machine specifications) require approval of the Minister prior to adoption, so additional time should be budgeted.

September 4, 2018: Nomination period begins (ends September 14, 2018). During this period, the chief election officer must make certain documents available for public inspection and must submit certain nomination documents to Elections BC.

September 22, 2018: Campaign period begins (ends October 20, 2018). This is relevant for the calculation of campaign period expenses and election advertising.

October 10, 2018: Advanced voting opportunity must be held from 8 a.m. to 8 p.m. A second advanced voting opportunity must be held on the date set by bylaw.

October 20, 2018: General Voting Day

Questions?

Please contact us if any questions arise during your election preparation. As usual, we will be available on the election law hot line on voting days to assist Chief Election Officers and staff with any issues that may arise.

Rachel Vallance

SLAPP suits: Taseko, WCWC and potential legislation

The British Columbia legislature may soon enact legislation designed to address strategic lawsuits against public participation, otherwise known as 'SLAPPs.' A SLAPP suit is a claim filed with the aim of censoring, intimidating or silencing those who

The mere fact that a person, entity or local government may be sued for expressing views can create a chilling effect on discourse around matter public interest

are expressing views on a matter of public interest. Lawsuits can be extremely time-consuming and expensive, even where a defendant is eventually vindicated. SLAPP suits may be initiated by organizations or individuals with significant resources against organizations or individuals with limited resources. The lawsuit need not ultimately succeed to be an effective SLAPP; the process of defending the action, in and of itself, acts as a form of punishment. In addition, the mere threat of being sued can dissuade critics from expressing their views. SLAPP suits, by their very nature, run contrary to the freedom of expression protection provided under the Canadian Charter or Rights and Freedom.

A recent BC Court of Appeal decision, *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2017 BCCA 431, has re-ignited discussion about the lack of anti-SLAPP legislation in this province. The

case arose when Taseko unsuccessfully sued the Western Canada Wilderness Committee ("WCWC") for defamation in relation to five articles posted on its website regarding the building of an open-pit mine; WCWC alleged that the lawsuit was a SLAPP. At trial, the court awarded special costs to WCWC on the basis that Taseko ought to have dropped its claim for punitive damages and that its failure to do so was "an economic threat, and in a defamation case it may have had the effect of silencing critics." The Court of Appeal overturned the portion of the judgment related to the award of special costs.

British Columbia previously had in force anti-SLAPP legislation, albeit only briefly from April 11, 2001 to August 16, 2001 (this legislation was repealed by the new provincial government of the day: *Protection of Public Participation Act*, 2001 S.B.C. c. 19. rep. by the *Miscellaneous Statutes Amendment Act*, 2001, S.B.C. 2001, c. 32, s. 28). Currently, Ontario and Quebec have legislation to address SLAPP suits, as do many jurisdictions in the United States. In a letter dated February 7, 2018, several prominent legal minds, including former Justices of the Supreme Court of Canada, wrote to the Attorney General of BC expressing the need for effective anti-SLAPP legislation, and suggesting that the Ontario legislation may provide a model to follow. Under the Ontario legislation, a person being sued (the defendant) may bring a motion to have the claim against them dismissed. The Ontario legislation provides:

> (3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

The Ontario anti-SLAPP legislation, therefore, provides a mechanism whereby claims may be quickly dismissed, saving legal expenses and time, and conserving court resources.

The B.C. Attorney General replied that his government is committed to introducing legislation on lawsuits that unduly limit expression on matters of public interest and that "British Columbians should have the right to participate freely in public debates without fear of retribution."

For local governments, anti-SLAPP legislation may provide peace of mind in certain situations, for example where a local government wishes to express views against a certain project or developments. Case law demonstrates that local governments are not immune from litigation brought for an improper motive. In *Macmillan Bloedel Ltd. v. Galiano Island Trust Committee*, 10 BCLR (3d) 121; 63 BCAC 81, the plaintiff brought an action alleging bad faith and seeking to declaration that certain bylaws were void for illegality. The defendants asserted that the entire action was without merit and, among other things, was improperly motivated in an attempt to stifle public debate. This lawsuit consumed vast legal resources and the defendants, although ultimately successful on appeal, were embroiled in litigation for years.

Anti-SLAPP legislation may also encourage public participation with respect to local government matters. In *Scory v. Krannitz*, 2011 BCSC 1344, an action was commenced that alleged several causes of action against the respondents, arising out of the respondents' statements and written material, circulated in response to the claimant's permit application. The court concluded that there was no evidence to support any of the causes of action. The claimant had made very serious, unproven allegations against the respondents but provided no evidence to support many of the assertions. The court also found that the claimant greatly exaggerated the statements made by the respondents and fabricated other allegations concerning their conduct and statements.

Strategic lawsuits against public participation can, and do, arise from debate at the local government level. Moreover, the mere fact that a person, entity

or local government may be sued for expressing views can create a chilling effect on discourse around matter public interest. The BC government has expressed that it seeks to enact new legislation to address SLAPP suits, and local governments are encouraged to keep an eye on this matter.

Robin Phillips

Post AIT: CFTA and NWPTA Impacts on Municipalities

The Canadian Free Trade Agreement ("CFTA") is an intergovernmental agreement between the federal government and the each of the provincial and territorial governments of Canada to promote more liberalized trade in goods, services, labour, investment and procurement within Canada. CFTA came into force on July 1, 2017. CFTA replaces the former Agreement on Internal Trade ("AIT") and it is generally acknowledged that CFTA is a superior free trade agreement in terms of scope and coverage, detailed rules and enforcement mechanisms. Notably, CFTA does not replace the New West Partnership Trade Agreement between Alberta, British Columbia and Saskatchewan ("NWPTA") and local governments in those provinces remain bound by the terms of NWPTA as well as CFTA. The stated objective of CFTA is set out in Article 101 "to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services, and investments within Canada and to establish an open, efficient, and stable domestic market." Local governments are brought within the requirements of CFTA by Article 103 which provides that each provincial or territorial government is responsible for compliance by its "regional, local, district, and other forms of municipal government".

Overview of CFTA

CFTA is a 345 page document that is divided into seven parts with each part divided into chapters and articles. In addition to the objectives of CFTA stated above, Part I confirms that the agreement applies to trade, investment, and labour mobility within Canada and that the parties are guided by, among other things, the need to eliminate and avoid barriers to trade, investment, and labour mobility within Canada and by the need to ensure non-discriminatory treatment of persons, goods, services, and investments, irrespective of where they originate in Canada. Part II sets out general rules of trade that apply to all parties including to ensure non-discrimination and transparency in all measures related to trade while Part III of CFTA prescribes more specific free trade requirements

including those with respect to goods, services and investment (Chapter Three), government procurement (Chapter Five) and labour mobility (Chapter Seven). Part IV provides exceptions to the general rules found in Parts II and III while the remainder of CFTA consists of administrative provisions, including dispute resolution (Chapter Ten) in Part V, definitions in Part VI and the specific exceptions to the free trade rules for each government in Part VII.

Rules Governing Procurement

In general terms, the most important provisions of CFTA for local governments are in respect of the rules governing procurement which are set out in Chapter Five of Part III. Under Article 502, each party is required to provide open, transparent, and non-discriminatory access to covered procurement by its procuring entities. Procuring entities include local governments. Further, each party is required to accord to the goods and services of any other party, including goods and services included in construction contracts, treatment that is no less favourable than the best treatment the party accords to its own goods and services. The same requirement of most favourable treatment also applies to the suppliers of goods and services of any other party, including those goods and services included in construction contracts.

There are a number of words and phrases in Article 502 that merit further attention. The phrase "open, transparent and non-discriminatory access" is not defined in CFTA but widely understood in its everyday meaning. As well, CFTA provides specific examples of what does and what does not constitute open, transparent and non-discriminatory access in the specific rules set out in Articles 503, 506 through 517. For instance, in paragraph 5 of Article 503, the following are examples of procurement practices that would breach CFTA:

- according a preference for local goods, services, or suppliers;
- scheduling events in the tendering process in order to prevent suppliers from submitting tenders;
- specifying quantities of, or delivery schedules for, the goods or services to be supplied in order to prevent suppliers from meeting the requirements of the procurement;
- using price discounts or preferential margins in order to favour particular suppliers;
- limiting participation in a procurement only to suppliers that have previously been awarded one or more contracts by a procuring entity;
- requiring prior experience if not essential to meet the requirements of the procurement;
- providing information to one supplier in order to give that supplier an advantage over other suppliers; and
- adopting or applying any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of any other Party in its procurement.

Additional rules governing how procurements must be conducted are set out in Articles 506 through 517. Under Article 506, rules are prescribed for the publication and contents of tender notices. Article 507 provides that a local government must limit its restrictions on participation in a procurement to only those that are essential to ensure that a supplier has the legal and financial capacities, and the commercial and technical abilities, to undertake the relevant procurement. Article 508 permits a local government to limit tenders to prequalified suppliers provided that the prequalification process is consistent with Chapter Five and it is not done in a way so as to circumvent the rules for an open, transparent and non-discriminatory process. Similarly, Article 509

permits a local government to prepare, adopt, and apply any technical specification for the procurement, provided they are not done so for the purpose of creating unnecessary obstacles to trade. Under Article 510, a procuring entity is required to make available to all suppliers any new information or clarification of the original information set out in the tender documentation provided in response to questions from one or more suppliers, in an open, fair, and timely manner. Article 511 requires a procuring entity to establish reasonable time periods for suppliers to prepare and submit responsive tenders.

Article 512 permits procuring entities to conduct negotiations with suppliers, provided the procuring entity has indicated its intent to conduct negotiations in the tender notice or it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the tender documentation. As well, Article 513 permits limited tendering in the circumstances described in paragraph 1 provided the limited tendering is not used for the purpose of avoiding competition among suppliers or in a manner that discriminates against, or protects, certain suppliers. Article 514 also permits local governments to conduct a procurement by using an electronic auction, provided the rules in Article 514 are followed.

Articles 515 through 517 round out the specific rules for procurement. Under Article 515, a local government must receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders. Article 516 requires a local government to promptly inform participating suppliers of its contract award decisions, and, on the request of a supplier, do so in writing. Subject to Article 517, a local government must also, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select its tender. The exceptions in Article 517 include any supplier information that might prejudice fair competition or any disclosure of information that would: impede law enforcement; prejudice the legitimate commercial interests of third persons, including the protection of intellectual property; be contrary to the public interest; or that would be exempt from, or contravene, the Freedom of Information and Protection of Privacy Act, or other applicable enactments.

"Covered Procurements" and Threshold Amounts

Article 502 also provides that only a "covered procurement" is subject to the procurement rules under CFTA. To determine what constitutes "covered procurement", reference must be had to Article 504 which prescribes the rules concerning scope and coverage of CFTA in respect of procurement. Under paragraph 2 of Article 504, "covered procurement" is defined as

> "procurement for governmental purposes by a procuring entity of a good, service, or any combination thereof, by any contractual means, including purchase, lease, and rental, with or without an option to buy.

Also, to be a "covered procurement", the value of the procurement must equal or exceed the relevant thresholds set out in paragraph 3 of Article 504. The thresholds in paragraph 3 of Article 504 for local governments are $100,000 or greater for goods or services, excluding construction and $250,000 or greater for construction. These thresholds are greater than those found in NWPTA (which are $75,000 for goods and services and $200,000 for construction) and so compliance with the thresholds in NWPTA will also mean compliance with CFTA. The CFTA thresholds will also be adjusted for inflation under paragraph 4 of Article 504 and so they will gradually increase over time.

The rules for valuation of a procurement for threshold purposes are set out in Article 505. Under paragraph 1 of Article 505, a local government must estimate what the value of the procurement would be as of the date the tender notice will be published the estimate must include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration under the procurement contracts. If the procurement is for construction, the procuring entity must include in its valuation the value of all goods and services to be supplied by the supplier in connection with the construction.

Exceptions to the Procurement Rules

A covered procurement having a value that equals or exceeds the thresholds under Chapter Five may nevertheless be exempt from the normal procurement rules. Article 520 provides that a covered procurement is subject to the exceptions set out in a party's Schedule to Annex 520.1. The federal government and each province and territory has its own schedule with various exceptions to the general procurement rules listed. British Columbia's Schedule limits its procurement rules exceptions to circumstances where another government or province has imposed procurement exceptions under their respective schedules and then only to the extent of the exception provided for by the other party. It remains to be seen if the developing trade war between Alberta and British Columbia arising from the Kinder Morgan Pipeline controversy may lead to procurement exceptions being imposed against Alberta suppliers. Other limited exceptions are also permitted in the circumstances detailed in paragraphs 2 through 4 of Article 520.

Dispute Resolution

Chapter Ten of CFTA sets out the rules for dispute resolution in cases where a party has, or is alleged to have, breached the agreement. Dispute resolution may consist of government to government dispute resolution between the provinces, territories or federal government under Part A of Chapter Ten or dispute resolution between a private party and a government under Part B. Under Article 1000, parties undertake to resolve disputes in a "conciliatory, cooperative, and harmonious manner"; however, if governments are unable to do so, Part A of Chapter Ten provides for monetary penalties or the imposition of tariff costs. Dispute resolution under Part A is prescribed for the federal, provincial and territorial governments and so a local government breach of CFTA would be resolved by the province assuming responsibility for the matter on behalf of the local government. Crucially for local governments, under Article 1001, private party –government disputes do not apply to local governments; however, it remains to be seen whether a private party could launch a civil action against a local government outside the dispute resolution process provided by CFTA for breaching its CFTA obligations.

Best Practices for Local Governments

Local governments should ensure that their procurement policies align with the requirements of CFTA, provided that thresholds for public procurements should be set at the more stringent levels prescribed by NWFTA ($75,000 for goods and services and $200,000 for construction) to ensure compliance with both NWPTA and CFTA. CFTA provides detailed requirements that if followed, will enable local governments to provide free, open and transparent procurements and help ensure that citizens receive good value for the goods and services their local governments provide.

Lindsay Parcells

Energy Step Code

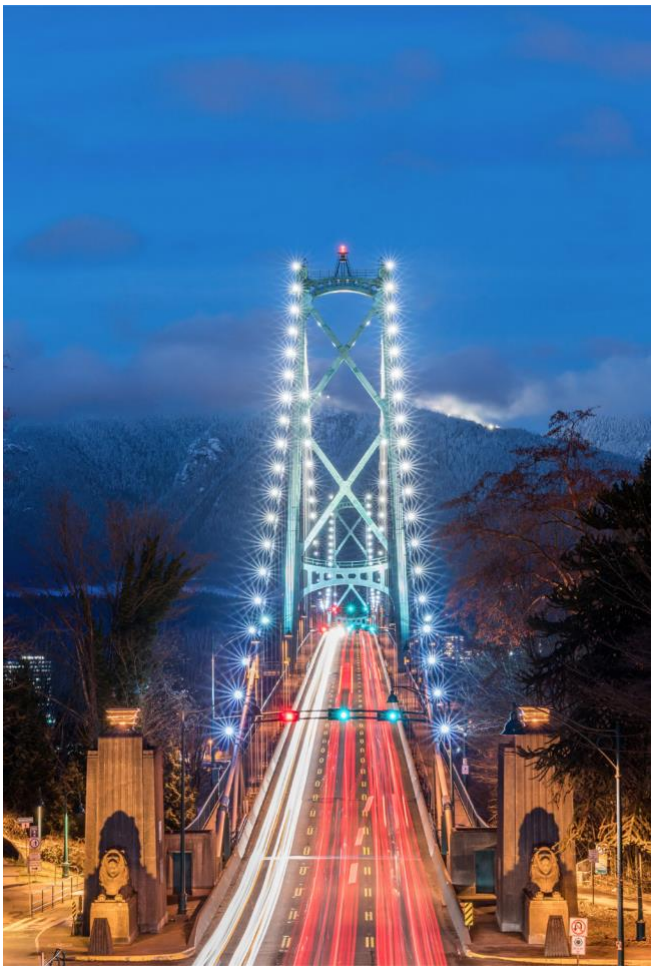
On September 15, 2017, the Energy Step Code Council (the "ESCC") and Building and Safety Standards Branch released "BC Energy Step Code: A Best Practices Guide for Local Governments" (the "Guide"). The Guide's intent is to assist local governments with implementing the Energy Step Code (the "ESC") in ways that reflect local capacity. This article reviews the policy and legal tools highlighted by the Guide for implementing the ESC, as well as some of the other important considerations for local governments to take into account.

What is the BC Energy Step Code?

The ESC is a performance-based standard for building energy efficiency that aims for all new construction across the province to be "net-zero energy ready" by 2032. The ESC builds on changes to the BC Building Code made in 2008 that, for the first time, imposed energy efficiency requirements. These changes gave designers and builders the option of choosing between performance-based and prescriptive approaches for meeting Building Code requirements. While the vast majority of buildings built since 2008 have followed a prescriptive approach (i.e. buildings met specific requirements for insulation, windows, water heaters, etc.), many of these buildings have failed to perform as well as intended.

Accordingly, the ESC uses a performance-based approach in order to give the development industry more flexibility in meeting energy efficiency goals and, along the lines of the overall intent of the Building Act, ensure greater province-wide consistency in achieving progress towards energy-efficiency development.

The ESC's performance-based approach establishes performance targets for energy efficiency that local governments can incorporate



into their policies and bylaws that give the builder/developer/designer flexibility for implementation. The ESC outlines targets in a series of "steps" applied to Part 3 (large and complex buildings) and Part 9 (houses and small buildings) buildings, the first being compliance with the basic requirements of the BC Building Code and the highest (Step 5 for Part 9 and Step 4 for Part 3) being "net-zero energy ready." Compliance is measured through whole-building energy modelling (conducted by Energy Advisors) and airtightness testing.

Importantly, the ESC requirements for Part 9 buildings are applicable, if adopted by a local government, throughout BC, while those for Part 3 buildings currently only apply within Climate Zone 4 (i.e. Lower Mainlaind and South Vancouver

Island). Application of Part 3 requirements to the rest of BC is intended to occur in the future.

As of December 15, 2017, local governments where the BC Building Code applies are legally empowered to implement aspects of the ESC, including incorporating ESC steps within their bylaws, as an "unrestricted matter" under section 5 of the Building Act.

Policy and Legal Tools Available to Local Governments

The Guide highlights policy and legal tools available to local governments for implementing the ESC in five areas: general awareness and support, incentives, requiring compliance, removing barriers, and demonstrating leadership.

A. *General Awareness and Support*

A local government can increase industry and public awareness of its intention to support and implement the ESC by:

- including a policy statement within its Official Community Plan that indicates energy efficiency as a clear priority;
- referring to the ESC within a community energy and emissions plan (also referred to as a community energy plan or climate action plan);
- piloting a new energy efficiency policy in accordance with the ESC in one geographic area through a neighbourhood plan or local area plan;
- creating learning forums to connect industry to energy efficiency experts, products, practitioners, and tools; and/or
- incorporating a non-regulatory/voluntary "sustainability checklist" into the development application process.

B. *Incentives*

A local government can encourage the voluntary uptake of the ESC by providing a variety of incentives, including:

- "greenstreaming" or fast-tracking the processing of ESC-related development applications (note: it will be important to consider the impact this may have on other applications);
- redirecting revenue from the Climate Action Revenue Incentive Program—a conditional grant provided to signatories of the BC Climate Action Charter equivalent to 100% of the carbon taxes they pay directly—to fund a program that incentivizes compliance with the ESC (e.g. a building permit or Energy Advisor rebate program);
- implementing building permit or Energy Advisor rebate programs;
- leveraging revitalization tax exemptions under section 226 of the Community Charter;
- incorporating a "sustainability fee" into building permit application fees in order to fund the above rebate programs; and/or
- using density bonuses in zoning bylaws to encourage voluntary uptake of the ESC.

C. *Require Compliance*

Although it is recommended for the transition period of the ESC (i.e. 2017-2020) that local governments avoid requiring compliance with higher steps, it is nevertheless open to local governments to enforce compliance with any of the steps of the ESC. Requiring compliance with the ESC can be accomplished through:

- phased development agreements;
- building bylaws; and/or
- rezoning.

D. *Removing Barriers*

Local governments can also provide a specific kind of incentive for voluntary uptake of the ESC by removing "red tape." This could involve:

- introducing design guidelines and policies that assist developers in achieving certain objectives related to the ESC;
- amending the definition of "floor space ratio" in zoning bylaws to not penalize thicker, more insulated walls (many zoning bylaws currently define floor space ratio by calculating to the exterior perimeter of buildings, thereby penalizing thicker, more insulated walls); and/or
- reviewing building bylaws to remove procedures that unintentionally inhibit compliance with the ESC (e.g. procedures related to compliance with prescriptive requirements).

E. ***Demonstrating Leadership***

Finally, the Guide also encourages local governments to demonstrate a leadership role in the uptake of the ESC through:

- creating a corporate policy that ensures all new civic buildings meet a particular step (e.g. make it a requirement in tenders for new facilities that they be built to an upper step of the ESC);
- encouraging other public facilities to following standard (e.g. provincial and federal government buildings); and/or
- using local government land to build local capacity for compliance with higher steps.

Other Considerations

While reviewing the best policy and legal tools to use in implementing the ESC, local governments are also encouraged to consider a number of other factors, including:

- consulting with local stakeholders early on (the ESC Provincial Policy encourages six months before implementing lower steps and 12 months before higher steps);
- keeping the ESCC in the loop before and after implementing particular steps;
- consulting with legal counsel early on to ensure minimal risk and maximum leverage of available local government powers;
- considering how building officials will be trained in the ESC and how new inspection processes will occur; and
- designing a regular review process that measures local success at implementation and that includes, among other things, surveying whether industry and local government staff find the ESC understandable, an accounting of the marginal costs of implementing different policy tools and steps, and a review of the effect implementation has had on development processing times.

Ultimately, implementation of the ESC is intended to be an "all hands on deck" process whereby local governments, the Province, the ESCC, the public, and industry work together to implement high energy efficiency standards as smoothly and efficiently as possible.

Ian Moore

Special Costs for Pre-Litigation Conduct

The general rule upon completion of litigation is that the successful party is entitled to its costs: Rule 14-1(9). Typically the costs recovered by a successful litigant represent only a small fraction of the actual legal costs incurred by that party. In some circumstances, increased costs are available. Historically, where a party engaged in reprehensible conduct, special costs could be awarded by the courts as a punitive measure, to express the court's rebuke and disapproval of the misconduct.

Over time, the courts did not consistently treat the issue of whether special costs could be awarded as a result of conduct that took place prior to the commencement of legal proceedings. To address the inconsistency, in Smithies Holdings Inc. v. RCV Holding Ltd., 2017 BCCA 177, ("Smithies"), the BC Court of Appeal established a new "bright line rule" that pre-litigation conduct should not be

considered in determining whether an award of special costs is appropriate, because:

(a) Pre-litigation conduct that gives rise to a cause of action will already be the subject of a damage award flowing from the objectionable conduct (para. 131);

(b) Where a party's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency, an award of punitive damages is available (para. 131); and

(c) It is not necessary to resort to special costs to sanction pre-litigation conduct where the law already provides appropriate relief and remedies for such conduct (paras. 133 and 134).

The application of Smithies in the specific context of bylaw enforcement proceedings was in issue in *Kent (District) v. WeeMedical Dispensary Society*, 2018 BCSC 92 ("Kent"). In that case the District brought a petition to obtain a statutory injunction in order to shut down an illegal marihuana dispensary. The Respondents had already been the subject of enforcement proceedings in respect of their operations in eight separate jurisdictions, and had twice been found in contempt of court. Special costs had also already been awarded against the Respondents (prior to the Smithies ruling).

In *Kent*, the Supreme Court was asked to distinguish the ruling in Smithies. The District argued that the policy rationale expressed in Smithies does not apply to petition proceedings brought to enforce local government bylaws: damages are not in issue; the objectionable conduct does not give rise to causes of action that are compensable by damage awards, nor are punitive damages available to punish high-handed conduct that offends the court's sense of decency. The remedy in issue is court ordered compliance with the bylaw, not a financial award to compensate one private party for the conduct of another. In short, there is no other available or appropriate relief or remedy to sanction pre-litigation conduct arising in the lead up to statutory injunction proceedings.

Unfortunately these submissions were not accepted. The Court held that Smithies is a complete bar to special costs based on pre-litigation conduct, even in the context of local government bylaw enforcement proceedings. That said, the rulings in Smithies and Kent do not curtail the availability of special costs to punish reprehensible conduct that occurs in the course of litigation.

Sara Dubinsky

Preventing Water Wars in Times of Drought

Cape Town, South Africa, is preparing for a "Day Zero" – a day when the authorities predict municipal wells will run dry. According to the statement from Cape Town's Mayor, Day Zero is expected mid-May, 2018. The Mayor urges that: "All Capetonians must … continue to use no more than 50 litres per person per day to help stretch our dwindling supplies."

According to an article published in the National Geographic on July 14, 2016: "The United Nations predicts a global shortfall in water by 2030."

The prospect of water shortage is alarming for many reasons. Most obviously – people cannot live without water. Less obviously – authorities providing water may start waging water wars against each other to protect what they see as their resources.

In British Columbia, legislation is not adequate to protect local governments from water wars. The following will examine why and what can be done to address the shortfall.

Precedence in time of water shortage

In British Columbia, the province owns all surface and ground water. To use water, a person requires

a provincial license under the *Water Sustainability Act* (WSA).

Each water license specifies the purpose of use, the water source, and the date of precedence (the date on which the use begins). In instances of water shortage, license holders with junior precedence may be asked to release water so that a license holder with a senior precedence has enough. This is typically referred to as First in Time, First in Right (FITFIR).

In the WSA, there are some exceptions to the strict application of FITFIR in times of water shortage.

Fish protection: Section 88 of the WSA enables the minister to make an order respecting diversion and use of water, regardless of FITFIR rights, if the minister considers that "the flow of water in a specified stream is or is likely to become so low that the survival of a population of fish in the stream may be or may become threatened."

Harm to aquatic ecosystem: Section 86 and section 87 of the WSA enable the province to declare significant water shortages. The order of significant water shortage can be issued by a minister – for up to 90 days – or by the cabinet for an indefinite period of time. If the significant water shortage is declared, the water comptroller must determine the "critical environmental flow threshold" for the affected streams.

The term "critical environmental flow threshold", in relation to the flow of water in a stream, means the volume of water flow below which significant or irreversible harm to the aquatic ecosystem of the stream is likely to occur. The term "aquatic ecosystem", in relation to a stream, means the natural environment of the stream, including: the stream channel, the vegetation in the stream and the water in the stream.

If there is a significant water shortage order, the critical environmental flow threshold has super-priority. That means that the amount of water required for critical environmental flow of the stream takes precedence over water license holders, including local governments.

Local governments do not have super-priority

The WSA does not expressly provide super-priority for municipal waterworks in times of water shortages. That means that local governments will be subject to higher-priority licenses, fish protection orders and aquatic ecosystem orders, described above.

Notably, the WSA provides super-priority for "essential household use." The term "essential household use" means the use by the occupants of one private dwelling of not more than 250 litres of water per day for (a) drinking water, food preparation and sanitation, and (b) providing water to animals or poultry that are kept (i) for household use, or (ii) as pets. (*Compare with 50 litres per person per day that Capetonians are being allowed to use).

It is unlikely that the intent was to apply this super-priority to municipal waterworks. However, if this section does not apply to municipal waterworks, then people who receive water from local governments (which is most British Columbians), do not appear to have "essential household use" protection under the WSA. The scope of this exemption would benefit from further provincial clarification.

What can local governments do?

In areas where local governments share water sources, regional long term water planning may help avoid water wars.

The WSA contains some water planning options.

Water Sustainability Plan: A water sustainability plan is the main water planning tool contemplated in the WSA. It allows the province to develop a plan for water use in an area and implement this plan by regulation. As part of the plan and its implementing regulations, the province may amend the terms and conditions of existing water licenses (section 79 of the WSA).

Water Objectives: Section 43 of the WSA enables the province, by regulation, to establish water objectives. This includes objectives necessary to sustain water quantity for specific uses of water. While this tool is less comprehensive that the Water Sustainability Plan, it may also be less onerous and costly to implement.

Area regulations: Section 127(1)(n) of the WSA contemplates regulations regarding determining critical environmental flow thresholds. A regulation under the WSA may make different provisions for different areas, water use purposes and water sources.

Water reservations: Section 39 of the WSA enables the provinces to reserve unrecorded and unreserved water if the province considers it advisable "to make provision for a water supply from a stream or an aquifer for a proposed waterworks." Reserved water cannot be diverted or used, except for the purpose of which it is reserved (with minor exceptions).

Expropriation: Under the *Community Charter* and the *Local Government Act*, local governments have the authority to expropriate water licenses, if necessary. In the event of such expropriation, the province may issue a new license to the local government, retaining the precedence. While expropriation may be an option in some cases, where the dispute about water is between two or more expropriating authorities, it may not be possible.

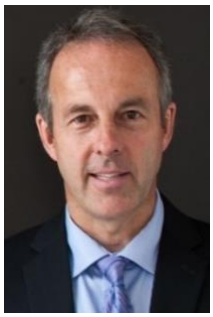
Summary

It is not the intent of this article to be alarmist. Most jurisdictions in British Columbia are not yet faced with a prospect of a "Day Zero". However, in light of the WSA, and its shortfalls, it would be prudent to consider what will happen if it comes. Understanding the demands on the water source, the risks to the water system, and planning ahead will pay off in the future.

Olga Rivkin

Lidstone & Company Lawyers

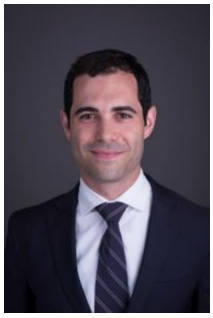
Paul Hildebrand is Associate Counsel at Lidstone & Company. Paul is the head of the law firm's Litigation Department. He won the Gold Medal in law at the University of British Columbia in 1980. Paul has a Doctorate in Economics in addition to his Law Degree and Master of Science degree in mathematics. 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.

Rebecca Coad joined Lidstone and Company as an associate lawyer after serving as a judicial law clerk at the Court of Appeal. She received her J.D. from the University of British Columbia, where she received numerous awards for academic excellence. She started her law practice at a national firm in litigation and dispute resolution and she brings that experience to her work for local governments.

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.

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.

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 a graduate of Queen's University's joint law-public administration program. Ian provides general local government legal services on a range of topics, including governance, finance, land use, real property and environmental matters. Ian is the administrator of the firm's Natural step and Climate Smart programs. 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.*

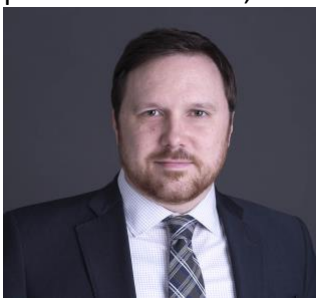
Lidstone & Company News

Rebecca Coad

The lawyers and staff are happy to welcome Rebecca Coad to the firm. Rebecca has joined Lidstone & Company as an associate lawyer after serving as a judicial law clerk at the Court of Appeal. She received her J.D. from the University of British Columbia, where she received numerous awards for academic excellence. Called to the British Columbia bar in 2015, she started her law practice at a national firm in litigation and dispute resolution and she brings that experience to her work for local governments. Her areas of experience include governance, real property law, contractual disputes, corporate disputes, railway disputes, fraud claims, litigation, injunctions, environmental/ contaminated sites work, Aboriginal work and tax sales.

Matthew Voell

We are pleased to welcome Matthew Voell back to the firm as of April 3, 2018 from his sojourn in an intensive barrister's practice in a boutique litigation firm. Matthew acts for clients on a wide variety of public law matters, including



administrative, constitutional, aboriginal, and human rights issues. He also helps clients achieve resolution in disputes involving contracts, development and strata property law matters. Matthew was called to the British Columbia Bar in 2012 and has appeared before the Provincial and Supreme Courts of British Columbia, the British Columbia Court of Appeal, the Federal Court of Canada, and a number of administrative tribunals.

Upcoming Presentations

Sara Dubinsky will be chairing the national Infonex conference on *Legalization of Cannabis* to be held on April 17 and 18 in Vancouver. She will also be presenting on the topic of local government legalization of cannabis issues at the PBLI annual *Local Government Law* Seminar in Vancouver on April 18. She will present on the topic of *Dispensary Regulation and Enforcement* at the annual conference of the Licence Inspectors and Bylaw Officers Association to be held in Victoria on June 7…**Olga Rivkin** is leading the pre-conference workshop at the annual conference of the Planning Institute of British Columbia…**Marisa Cruickshank** is presenting on the topic of *ESTABLISHING BOUNDARIES - Through the Lens of Harassment* at the annual meeting of the Thompson Okanagan Local Government Management Association in Osoyoos on April 19. Marisa will be speaking along with **Andrew Carricato** on the topic of *Managing Difficult People: Elected Officials and Employees* at the annual conference of the Local Government Management Association in Victoria on May 17...**Don Lidstone** is chairing the annual PIBC *Local Government Law* conference in Vancouver on April 18. He is speaking on *Bylaw Drafting* at the annual conference of the Local Government Administration Association in Red Deer on March 20, *Implementation of the MIABC Model Building Bylaw* at the MIABC annual Risk Management Conference on April 12 in Vancouver, *First Nation Agreements* at the TOLGMA annual conference in Osoyoos on April 19, *Legal Updates* at the North Central Local Government Management Association on April 13, and *Building Regulation* at the BOABC annual meeting in Kelowna on May 1.