

# DO B.C. LOCAL GOVERNMENTS NEED AN INTEGRITY COMMISSIONER?

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# What I'm Not Here For

- Not here to demonize elected officials
- Not here to unjustly criticize elected officials

# What I Am Here For

- Discuss better ways to educate and support elected officials
- Discuss better ways to investigate and sanction elected officials, when necessary
- Convince you that adopting Codes of Conduct for elected officials and an Integrity Commissioner to enforce these Codes of Conduct would be a positive step for local government, the public and elected officials

# What's The Problem?

## Crisis in Confidence

“Fraud, nepotism, conflict of interest, questionable expense claims. In almost any workplace, these alleged transgressions would have led to one of two bleak prospects: resign or get fired. But in city council chambers across the country, some of those cloaked in scandal keep marching onward.”<sup>1</sup>

*<sup>1</sup>The Globe and Mail “Mayors Behaving Badly: Cities strain to hold leaders accountable” Monday, January 13, 2014, p. A8*

# What's The Problem? (cont.)

## Some Canadian Examples

- In Laval, Que., former Mayor Gilles Vaillancourt faced criminal charges including gangsterism, while corruption-plagued Montreal had four mayors in just over a year.<sup>2</sup>
- In Ontario, London Mayor Joe Fontana was on trial on charges of fraud.<sup>2</sup>
- The late Toronto Mayor Rob Ford openly admitted to using crack cocaine while in one of his “drunken stupors,” though he was not charged with any crime.<sup>2</sup>

<sup>2</sup>*Globe and Mail, supra*

# What's The Problem? (cont.)

## Some B.C. Examples

- *R. v. Brian Skakun*
  - City of Prince George Councillor
  - Convicted in May, 2011 of breaching s.30.4 of FOIPPA
  - Released confidential personal information from a closed Council meeting
  - BCSC and BCCA upheld conviction
  
- *R. v. Scott Young*
  - Former Mayor of City of Port Coquitlam
  - Convicted of assault x2 in 2008
  - Termination of relationship with girlfriend
  - Continued in Mayor's office while prosecution went forward

# What's The Problem? (cont.)

## Some Further B.C. Examples

In 2015/2016, further publically reported B.C. examples include:

- Four of seven councillors in Lantzville resigned leaving the town without enough Councillors to convene a meeting<sup>3</sup>;
- A White Rock Councillor was censured after publishing comments that City lawyers considered to be defamatory<sup>3</sup>;
- Volunteer firefighters in Chase complained about bullying by the Mayor<sup>3</sup>;
- The Pouce Coupe Mayor contacted the RCMP to spur removal of images posted as part of an ongoing dispute with a former elected official<sup>3</sup>;
- The Mayor of Saanich admitted that he misled the media about an extramarital affair, and subsequently made complaints of misconduct against police and staff at City Hall<sup>3</sup>;

# What's The Problem? (cont.)

- The Mayor of White Rock called the RCMP to City Hall in an attempt to remove a former council member from the premises after a verbal altercation over a proposed development application<sup>3</sup>;
- A Central Okanagan Regional District Director was publically censured for divulging confidential information<sup>3</sup>;
- A City of West Kelowna Councillor censured for conflict of interest around a development application<sup>3</sup>; and
- Allegations of bullying and calls for the Mayor of Nanaimo to resign<sup>3</sup>.

These examples illustrate a range of concerns local governments may face with the behaviour of a small percentage of their elected officials.

<sup>3</sup>The Vancouver Sun "Bitterness lingers as Lantzville's Council Implodes" by Rob Shaw, May 27, 2015

<sup>3</sup>Peace Arch News. "White Rock councillor censured over online defamation" by Melissa Salley, April 28, 2015. Updated Apr. 28, 2015

<sup>3</sup>CBC News. "Volunteer Firefighters in Chase, BC being bullied by Mayor says complainant" by Doug Herbert, June 19, 2015

<sup>3</sup>Alaska Highway News. "Tensions Flare in Pouce Coupe council dispute." by Johnny Wakefield, June 18, 2015.

<sup>3</sup>The Globe & Mail. "BC Mayor admits he lied to hide extra marital affair." by Justine Hunter, January 12, 2015

<sup>3</sup>Peace Arch News. "White Rock mayor calls in RCMP to eject former councillor" by Melissa Smalley, September 29, 2015

<sup>3</sup>Kelowna Capital News. "Central Okanagan regional director censured by colleagues", December 16, 2015

<sup>3</sup>Penticton Herald. "City in West Kelowna censured by his council", February 2, 2016

<sup>3</sup>Chek News. "Calls for Nanaimo Mayor to resign are creating buzz in the City". March 21, 2016



# What Can A Local Government Do?

## A. Conflict of Interest/Inside and Outside Influence/Disqualifications

- for the more serious behaviour we have statutory provisions in the *Community Charter*
- s.101 to 103 *Community Charter*; conflict of interest and inside/outside influence
- s. 109 *Community Charter*; disgorgement process
- s. 110 *Community Charter* ; disqualification from office
- s.111 *Community Charter*; BCSC order

# What Can a Local Government Do? (cont.)

## B. Closed Meeting Confidences

- s.117 *Community Charter*

- (1) *A council member or former council member must, unless specifically authorized otherwise by council,*
  - (a) *keep in confidence any record held in confidence by the municipality, until the record is released to the public as lawfully authorized or required, and*
  - (b) *keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee discusses the information at a meeting that is open to the public or releases the information to the public.*

- s.30.4 *FOIPPA*

*An employee, officer or director of a public body or an employee or associate of a service provider who has access, whether authorized or unauthorized, to personal information in the custody or control of a public body, must not disclose that information except as authorized under this Act.*

# What Can A Local Government Do? (cont.)

- But when elected officials' behaviour is more associated with:
  - Bullying
  - Harassment
  - Rude comments
  - Pressuring employees
  - Disrespectful attitude/tone
  - Privacy breaches
  - Closed meeting breaches

this creates ongoing governance challenges for local governments
  
- Local governments are resorting to censure motions

# What Can A Local Government Do? (cont.)

## C. Censure Motions

- Council/Board driven process; Court's have recognized this process:

- *Barnett v. CRD*, 2009 BCSC 471

*“Thus, I do not accept that the Regional District “has no jurisdiction” to govern the (mis)conduct of Directors. The weight of the statutory and judicial authority suggests that a Regional Board has the ability to determine its own internal procedures, which surely must include the ability to control misconduct by a Director.”*

# What Can A Local Government Do? (cont.)

## C. Censure Motions (cont.)

- *Skakun v. Prince George (City)* 2011 BCSC 1796

*“By my reading of the Community Charter, it is reasonable to imply council have an obligation to regulate a councillor’s misconduct when there is a substantial falling away from the expected standard...In sum then, I find there is an implied power in council to regulate misconduct of a councillor that falls short of disqualification.”*

- Procedural fairness is required

# What Can A Local Government Do? (cont.)

- Censure process has some negatives, including:
  - Staff vs. Elected officials
  - Elected officials vs. Elected officials
  - Procedurally cumbersome
  - Costs; lawyers
  - Not always effective
  - Limited viable outcomes
- Censure process also has some positives

# What's Happening Elsewhere?

- Ontario amended *Municipal Act* in 2006
- Enabled local governments to adopt Codes of Conduct for elected officials
- Enable local governments to appoint Integrity Commissioners to enforce Code of Conduct
- Investigative powers
- Access elected officials' records
- Reprimand or up to 90 day pay suspension
- 422 Ontario local governments/45 have Integrity Commissioners

# What's Happening Elsewhere? (cont.)

- City of Toronto
- First Integrity Commissioner in Canada; 2004
- Broad functions assigned by City Council:
  - Advisory
  - Compliance Investigations
  - Reporting
  - Education
- Several other large Ontario local governments have Integrity Commissioners as well (eg. London/Vaughan/Mississauga)
- City of Calgary recently created Office of the Integrity Commissioner<sup>4</sup>; first west of Ontario

<sup>4</sup>Calgary Herald, Dec. 14, 2015 "Selection Committee poised to name council's first Integrity Commissioner".



# What About B.C.?

## *New Community Charter Provisions?*

- Statutory censure motions? Pros vs. Cons
- Expand disqualification provisions? Pros vs. Cons
- Allow adoption of enforceable Council/Board Codes of Conduct and Integrity Commissioners?

# What About B.C.? (cont.)

## Advantages of Integrity Commissioner

- Negate need for censure/litigation
- Increase advisory opportunity for elected officials
- Increase education opportunity for elected officials
- Reduce formal complaints (eg., WorkSafe re bullying)
- Allow public access to process
- Force elected officials to focus on ethics
- Increase public confidence
- Reduce internal organizational conflict

# What About B.C.? (cont.)

## Disadvantages of Integrity Commissioner

- Unnecessary; current *Community Charter* provisions and censure process works well
- Just another “babysitter”
- More bureaucracy
- Cost
- Is the Integrity Commissioner really independent?
- Sanctions are a slap on the wrist