

Are Local Governments Required to Hold Oral Hearings?

Elected officials of local governments are required to exercise the duties and powers of the local government in different manners, depending on the nature of the matter at hand. When council or board members are exercising the local government's business powers (such as the administration of its regulations, and the management and purchase and sale of municipal assets), they owe a duty to act in the best interests of the local government as a corporation. When exercising the local government's legislative powers within its jurisdiction (such as enacting bylaws and resolutions regarding land use and development, or building, plumbing and fire safety standards) the elected officials involved are exercising a political power, and are accountable to the voters. As such, political considerations are relevant and expected in this role. However, when acting in a quasi-judicial role, such as making decisions whether to licence a business or rezone a property, elected officials are to provide procedural fairness, which consists of the affected party's right to be heard (which incorporates the right to notice), and the decision-maker's duty to act in a fair and impartial manner, and to recuse oneself from the decision-making if there is a conflict of interest or a reasonable apprehension of bias. Procedural fairness requirements are fact specific, in that the degree of fairness that is required will depend on the context. Generally speaking, some degree of procedural fairness is required where the decision will affect a party in a greater way than a member of the general public. The more serious the consequences or the greater the importance of the decision on a party, the greater the fairness that is owed by the decision-makers to that affected party. The more discretionary the decision-making power, the less fairness is required. Courts will also look at the statutory requirements related to the deci-

sion-making power to determine whether certain procedural fairness steps must be provided.

The right to be heard does not necessarily mean that there is a right to a court-like hearing, which normally involves cross-examination of witnesses and oral submissions. In order to meet the requirements of procedural fairness, the decision-maker must have and consider all the information necessary to make a fair decision. As such, subject to statutory requirements, it is up to the decision-makers to determine their own procedure, and to balance the requirement for adequate communication with the need for acting in an efficient and economical manner. Therefore, a "hearing" can involve the receipt and consideration of written submissions or materials only, with no oral submissions. Generally speaking, the higher the importance of the decision or more serious consequences, the more the hearing should resemble formal court proceedings. In the context of local government decision-making, there are statutory requirements to hold public hearings before passing certain bylaws, such as adopting an official community plan, zoning by-law, or a bylaw to terminate a land use contract. However, there are other situations in which procedural fairness requirements can be met through informal processes. Where the statute requires only that notice be provided, with no requirement for a hearing, the Courts have held that an oral hearing is not required, even where there is a right to make submissions to Council or the Board. In a permit context, procedural fairness requirements may be met through the receipt and consideration by the decision-maker of an application for permit only, together with the local government's provision of a written response as to

(Continued on page 2)

whether the application is granted, and if not, brief reasons.

The degree of procedural fairness required and the actual procedural steps that should be taken in a given situation is contextual and nuanced. Therefore, where a particular matter appears contentious, it is wise to seek legal advice to provide guidance during the process to reduce the risk of a successful challenge on the basis of a breach of procedural fairness.

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This article is intended for the general information of organizations in British Columbia. If your organization has specific issues or concerns relating to the matters discussed in this article, please consult a legal advisor.



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Adrienne brings over 24 years of legal experience in litigation and dispute resolution representing local governments and other public

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Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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