

2018-2022 DISTRICT OF HOUSTON COUNCIL ORIENTATION

Risk Management & Dispute Resolution

October 2018



Council Orientation Agenda

TIME	MONDAY	TUESDAY	WEDNESDAY
8:30 – 10:00	Local Government 101	Municipal Service Delivery & Planning	Asset Management
10:00 – 10:15	Refreshment Break	Refreshment Break	Refreshment Break
10:15 – 11:45	Governance & Ethics	Budgeting, Taxation, and Financial Affairs	Risk Management & Dispute Resolution
11:45 – 12:45	Lunch (Provided)	Lunch (Provided)	Lunch (Provided)
12:45 – 2:15	Setting Priorities, Delivering Outcomes	Community Planning & Development	Human Resource Management
2:15 – 2:30	Refreshment Break	Refreshment Break	Refreshment Break
2:30 – 4:00	Council Meeting Simulation	Municipal Facility Tour (Will Run to 5pm)	Public Relations



Outline

- What to Look for in a Bylaw
- Bylaw Enforcement
- Insurance & Risk Management
- Litigation
- Q&A



Role of Local Government

- A municipality is **a corporation of the residents of its area... governed by its Council...** established per Provincial Law.
- Provide for Good Governance of the community
- Provide services, laws and other matters for community benefit;
- Provide for stewardship of the public assets of the community;
- Fostering the economic, social and environmental well being of the community.



Bylaw Drafting

- 4 Judicial Presumptions
 - Intend to Comply w/ Constitutional & International Law
 - Cannot interfere w/ private property rights unless permitted to do so by law
 - Bylaws interfering with rights and freedoms will be strictly interpreted in favour of the individuals, not the local government
 - Bylaws granting benefits will be interpreted liberally



Bylaw Drafting

- Do you have the authority?
- Is there a process established?
- Who will be responsible?
- What changes need to be made?



Bylaw Drafting

- Must, may, will, shall, should;
- Define, Define, Define; Means v. Includes
- Delegation of Authority
- Active Clauses / Regulatory provisions
- Attachments / Schedules
- Offences & Penalties?
- **Do you understand it?**



Bylaw Drafting

- Four Readings Required
- Other Requirements?
- Expiration/Sunset Clause?
- Relationship with other Bylaws?
- Repeals & Amendments?





Challenge of Bylaws

- Unconstitutional
- Parliamentary Supremacy
- Lack of Jurisdiction
- Improper Delegation (see CC 154)
- Failure to Legislate / Set Standards



Challenge of Bylaws

- Lack of Procedural Fairness
- Internal Inconsistencies
- Vague, vague, vague
- Unreasonable



Contract Laws

- Offer
- Acceptance
- Exchange of Consideration
- Terms are Legal
- Capacity



When is it a Contract?

- No standard / required form for contracts
- Contracts can be oral or written
- Engaging in particular actions forms a contract
- Exchange of Goods, Services & Remuneration
- Creation of Expectation



Challenge to Contracts

- Lack of Key Contract Component (Non-Existant)
- Lack of Clarity (Unenforceable)
- Application of Legal Principles (Voidable)
 - Undue Influence
 - Unconsionable Terms
 - Duress
 - Capacity
 - Frustration



Challenge to Contract

- Courts will protect weaker parties
- Limitation Period
- Courts Decide
- Generally: Optional Termination Clauses & Process



Remedies

- Termination
- Damages
- Injunction
- Specific Performance
- Partial Payment



Tort Law

- Multiple Types
- Establishes Standard of Care
- Allows for Damages to wronged party
- Complements Criminal Law
- Rights of the Crown v. Rights of the Person
- Defences



Tort Law - Negligence

- Ought to have done something... but didn't.
- Elements:
 - Is there a Duty of Care owed?
 - What is the Standard of Care?
 - Breach caused by the act of defendant?
 - Defence for Negligence?
 - Damages?
- Covered by Insurance!



Key Torts for Council...

- Defamation / Slander
- Misrepresentation
- Vicarious Liability
- Several Liability



Mitigation of Risk

- Policy Decisions
- Document, Document, Document
- Regular and Ongoing Inspection / Works
- Warning of Hazard
- Reduction of Hazard
- Removal of Hazard



Questions?

Up Next... HUMAN RESOURCES

