Regional District Legislation Roadmap

February 28, 2025

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For

Association of Vancouver Island and Coastal Communities

Association of Kootenay and Boundary Local Governments

Lower Mainland Local Government Association

North Central Local Government Association

Southern Interior Local Government Association

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INTRODUCTION

The Province of British Columbia and Union of British Columbia Municipalities, in response to several resolutions passed at UBCM conventions regarding new or amended legislation governing regional districts, have asked the regional districts and local government area associations to demonstrate the extent of interest that may exist for such legislative reform. As an initial exercise, the regional districts and area associations are providing this discussion paper for interested parties to comment on current enactments and options for improvement. This paper and the options will be considered at the five area association conferences after the February 28, 2025, remote plenary session for the participants. This process may give rise to recommendations to the Province and UBCM at the September 2025 convention of the latter.

This paper is not the opinion of the five area associations, the regional districts, or our law firm. It is not a legal opinion. It is a discussion paper intended to identify issues and options for discussion. It is set up for comment and additional issues to be inserted by regional district elected and appointed officials and others prior to the 2025 area association conventions and annual UBCM Regional District Chair & CAO Forum. Ultimately, no legislation changes or adjustments will be possible without deep consultation with First Nations, municipalities, area directors, business, environmental interests, ministries, and many more.

In 2002 the Province published the book entitled *The Community Charter: a New Legislative Framework for Local Government*. On page 4, the minister stated: "The next phase of the reform process will expand to regional districts…". On page 6 the Community Charter Council stated: "These changes will serve as the essential building blocks for later legislative reform for regional districts…These reforms will be addressed in later phases". The *Community Charter* was adopted in 2003 and came into force in 2004.

From 2003 to 2022, UBCM endorsed 161 resolutions mentioning amending the *Local Government Act*. 34% were sponsored by regional districts. The rest are from municipalities. An additional 71 resolutions requesting an LGA amendment were submitted to UBCM for consideration and were either not endorsed or not admitted for debate. Of the 161 endorsed resolutions, three called for modernization of the LGA and one sought creation of a *Regional District Charter,* based on the White Paper published in May 2002 by the Province.

Municipalities will need to participate in this conversation, considering:

- the often-articulated need to 'level the playing field' between municipalities and electoral areas,
- the inability of RDs to respond to regional needs in a nimble fashion since the exercisable powers at the RDs are less nimble than those in municipalities thereby impairing the ability of the Region to truly act as a federation, and
- revenue and expenditure models have evolved to be unfair to either municipalities or rural areas, depending on location and history.

Fundamental to an analysis of structure, funding processes, and voting rules is whether regional districts continue to operate with service silos, how the interests of municipalities and rural areas can be balanced and protected in a fair way, and how to ensure that decision making is based on fair representation. It may not be necessary to alter these fundamentals if the processes and empowerment on the other fronts are modernized along the lines of the *Community Charter*. Also, it may be that Metro Vancouver Regional District does not fit any of the paradigms described in this document, given the special utility Acts, the relative absence of rural areas, the size of the current board, the magnitude of capital projects, the absence of a "Metro regional hospital district board", the focus of grants on transit, and the perceptions about citizen representation.

Thanks to the UBCM for hosting the initial consultation session at the annual convention in 2023, hosting the electoral area director consultation session in 2025, and the processing of relevant resolutions. As well, the Province has considered LGA amendments responsively over time to respond to UBCM resolutions, and will consider proposals from the UBCM after the area associations have considered the modernization of the Act.

Thanks to Chair Ben Geselbracht and E.D. Theresa Dennison for coordinating the regional meetings and organizational logistics for this process, and to the Regional District of Nanaimo and its CAO Douglas Holmes and officials Elizabeth Hughes and Gail Smith for taking on the responsibility of leading this discussion.

PRINCIPLES

Based on consultation with the regional districts over the past three years, the following fundamental principles govern the review, analysis, and recommendations:

- First Nations and Indigenous individuals must be included in the legislative reform program without discrimination
- No amendment to the regional district legislation shall impact the bond rating for the Municipal Finance Authority of British Columbia
- No regional district, or participant, shall be obligated to make any changes from status quo services, procedures or finances - regional districts may in their discretion voluntarily subscribe to new opportunities
- The legislative review shall not result in new downloading from the provincial government to regional districts, without sufficient new funding sources
- Regional districts need to be empowered to respond to rapid change such as emergencies and disasters, climate change, and other things not contemplated in 1965 when the legislation was initiated
- Regional districts must have the same level of recognition as municipalities in the context of relations with the provincial government, crown corporations, and crown agencies

- The legislation must reflect the unique character, culture and history of each regional district, noting the varied and constructive differences between metropolitan entities, rural entities, and combinations - legislation that says "one size fits all" will not work for the British Columbia regional districts
- Interests of municipalities must be balanced when considering interests of rural areas
- Ratepayers seek absolute accountability and transparency on RD project capital and operating costs.

EXECUTIVE SUMMARY

The existing legislation provides for regional districts as local governments that do not have the recognition or status of municipal governments. This is partly a function of the history of these entities, commencing at the time of the introduction of the legislation in 1965.

First Nations

First Nations have had traditional governments for at least 10,000 years and, as many would say, from time immemorial. Regional districts have existed since 1965. Despite this history, First Nation governments and members are not included in regional district governance (except in the limited circumstances where there is a treaty settlement area or special legislation, such as for the shíshálh Nation). British Columbia has adopted the *Declaration on the Rights of Indigenous Peoples Act* ("DRIPA") to formally incorporate into BC law the indigenous rights instrument of the United Nations entitled the "United Nations Declaration on the Rights of Indigenous Peoples" ("UNDRIP"). DRIPA sets out a process to align British Columbia laws with UNDRIP, and the provincial action plan provides for ending indigenous specific discrimination and promoting economic well-being. One of the specific actions in the BC action plan is to support inclusive regional governance by advancing indigenous participation on regional district boards. This was supported by UBCM in its July 30th, 2021, submission.

The Province should make this a high priority until it is done, but not alter the course of First Nation-regional district tables and others such as Fraser Basin Council that are already working to build consensus on structure and function.

Status

The *Community Charter* (CC) in section 1 recognizes municipalities as an order of government within their jurisdiction in accordance with principles based on the municipal charter of rights adopted by the Union of British Columbia Municipalities. Regional districts, on the other hand, are not recognized at the same level in the *Local Government Act* (LGA), considering there are no supporting principles of regional district governance in the LGA compared to those of municipalities in the CC

Similarly, the principles of municipal-provincial relations for municipalities are based on the UBCM charter of rights, while the regional district principles for relations with the Province are restricted to five elements that are less respectful of regional district jurisdiction and interests.

Under the constitution, all local governments in the provinces are children of their provinces, created and empowered by legislation. Regional districts are lesser creatures under the local government act, in the context of the statutory guiding principles, the provisions respecting relations with the province, the need to read nearly every section by also reading the relevant municipal legislation, the restrictions on regulations in the rural areas, and the extraordinary level of provincial approval requirements.

Part 9, Division 1 CC, entitled “Provincial-Municipal Relations”, does not clearly apply to regional districts in relation to unilateral changes such as forced amalgamations, expansions, dissolution, or separation.

Similarly, Part 9, Division 3 CC, entitled “Dispute Resolution”, does not clearly apply to regional districts in relation to disputes between regional districts and other local governments or the provincial government or a provincial government corporation. The dispute assistance, voluntary binding arbitration, mandatory binding arbitration, final proposal arbitration, full arbitration, and other provisions could provide practical solutions for regional districts encountering disputes.

Natural person powers

Municipalities in virtually every province have "natural person powers" (legal capacity, rights, powers, and privileges of a natural person of full capacity) to make agreements, acquire or dispose of property, delegate authority, participate in commercial/industrial undertakings, hire/fire and other things that a natural person can do. In BC, municipalities have natural person powers under section 8(1) CC. Regional districts, on the other hand, are limited to express corporate powers of a board listed in section 263 LGA. As well, a number of LGA provisions and regulations would not be required if the regional districts were to have natural person powers, such as the parks and trails regulation, which allows leases, SROWs, easements, licences of land for a regional park or trail.

Regulatory powers

A regional board may regulate people or things in accordance with a limited number of specific service powers under Part 9 LGA. Given the broad, overarching authority of a municipality under section 8 CC, the regulatory authority of a regional board in relation to building regulation, fire/health, drainage/sewage, waste, animals, nuisances, businesses, or other things, is restricted. Objectively, regional districts have reported that their regulatory powers are inadequate to address climate change, wildfires, flooding, heat domes, or other matters that municipalities address routinely. There are many examples, but one is the authority to regulate tree removal on land while the municipality on a contiguous parcel has extensive authority to regulate, prohibit,

or impose requirements. Ironically, regional districts had tree cutting regulation and prohibition powers outside TFLs and forest reserves from the 1970s until comparatively recently.

The regulatory powers of municipalities are based on the generic broad authority model adopted by most of the provinces and territories since the mid-1990s and upheld by the Supreme Court of Canada in 2004 in *United Tax Fellowship v. Calgary,* yet the regulatory powers of regional districts continue to be based on the approach taken in the 1849 *Baldwin Act* of Upper Canada which required specific detailed statutory provisions for each regulatory bylaw. Also, the counties governing the rural areas of other provinces such as Alberta have the same regulatory authority as the municipalities.

Places in British Columbia such as the heavily developed and populated community of Thornhill and other unincorporated areas require reasonable regulation of human activities to deal with protection of the natural environment and the other things at least to the extent that these things are addressed by contiguous municipalities. The absence of the authority to provide for such regulation in populated, developing, and other areas of British Columbia has resulted in irrevocable health, sanitary, planning, environmental, and servicing problems. There are dozens of examples, but these include places like Thornhill, Charlie Lake, French Creek, and Christina Lake, and like View Royal and Colwood prior to incorporation.

Municipal councils in a regulatory bylaw may provide for a system of licenses, permits, or approvals and take advantage of the list of regulatory standards and controls countenanced under section 15 CC, whereas a regional board can only do those things in a bylaw that relates to a regional district service such as waste management.

Considering the authority to enter on property, the cross reference in section 284 LGA appears to contain an error, by omitting sub-section 16(6) yet going on to limit the ambit of that sub-section even though it has been omitted. The authority to discontinue providing a utility or service to a property does not apply to regional districts.

Municipalities have the authority under section 8(3) of the *Community Charter t*o impose requirements in relation to their areas of regulatory authority, except in relation to firearms or business. This was heralded as a major advancement for municipalities. It is missing from the regional district regulatory authority, except for several limited purposes such as drainage and sewerage. Importantly, if a regional district provides a service, it cannot impose requirements in relation to the service, except in the limited instances where this is allowed (such as drainage and sewers).

As a result of the wildfires in Fort McMurray and Lytton, lawyers typically recommend adoption of preventive measures by the local governments. An example is a "fire smart" building bylaw. However, in most of the areas of the regional districts that have wildfire interface concerns, building regulation bylaws are limited to areas where the regional board has established a service

in relation to "building inspection". Generally, these areas are limited, and no regulation or inspection takes place even though the British Columbia building code applies throughout British Columbia as if it is a municipal bylaw under section 4(a) of the *Building Act.*

A related concern is the restrictive content of regional district building regulation bylaws in rural areas. The authority for building regulation in section 298 LGA is word for word the same as in the 1960 *Municipal Act* (RSBC 1960, c. 255). For regional district areas that have a building service, these 1960 powers can be exercised in accordance with section 297, but in my view these powers are inadequate to fulfill application of 2024 Building Code provisions. Also, although the 2024 Code applies as if a bylaw outside the building service areas, there are no building bylaws or permits to enforce the Code.

Municipalities have useful interpretive tools. For example, section 10 CC provides that municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not buy this contravene the other enactment. The regional district provisions are silent in this regard.

Services in rural areas

In any portion of a municipality, the council may proceed with a local service area so that the owners in that area pay for a service that is not subsidized by the rest of the municipality. This requires a buy-in from the taxpayers in the local area. This scheme, which is a modern and efficient crystallization of the traditional local improvement areas and specified areas, is used routinely through throughout municipalities.

In any portion of a regional district, the board may proceed with the service such that the owners in that area pay for that service and it is not subsidized by the rest of the regional district. The difference, however, is the process for initiating a new local area service in a rural area – in addition to the buy-in (assent, alternate approval, or petition) the bylaw requires the approval of the inspector, approval by the board or area director, as applicable, and possible directions from the minister for amendments. It is interesting, therefore, that as of the 1970's, under section 766AAA of the 1960 *Municipal Act* (RSBC 1960, c. 255) a regional district could establish a local improvement scheme or specified area scheme, being the statutory precursors to the local area service, in the rural area without provincial approval other than for boundary extensions.

The interface between the LGA and other provincial statutes causes problems for regional district service provision – for example, the *Environmental Management Act* creates problems for interpretation and application of LGA provisions. Also, Sections 315 and 316 LGA do not keep up with modern waste management initiatives.

Governance

One of the major areas of complaint: ascertaining who at the regional board votes on a matter, and whether their vote is calculated as a single or weighted vote. Municipal lawyers hear about this every week from every regional district (except Metro), and sometimes there is no clear answer in the legislation. In addition, perhaps due to various amendments being made over the years, the vote calculation rules are internally inconsistent and difficult to ascertain.

Several boards have concerns about the inordinate number of directors on their board, frustrating consensus building and fulsome debate.

The rural director alternate system can be anti-democratic. The alternate rural director takes the place of an elected director in the case of vacancy or absence, and this replacement of an elected director by an individual personally appointed by the director can subsist for years without elector approbation. Although some have said that alternates may be unnecessary in the age of electronic meetings, there are also many who rely on this for coverage in relation to illness, injury, or employment or family commitments. This is important when one considers there is only one director for some large electoral areas (such as Thornhill – about 4000 residents). It should be noted as well that under BC statutes, alternative directors are allowed on business corporations or societies.

Borrowing

The municipal finance authority has the highest bond rating in Canada. This bond rating is higher than that of BC, Alberta, Quebec, or BC Hydro. Local governments borrowing through MFA enjoy remarkable long-term interest rates, compared to those of lending institutions. Accordingly, it would be unwise to alter this regime that was developed after many cities went bankrupt in the Great Depression.

The MFA exceptional rating is the result of a joint and several system of statutory security built on the regional district structure. Section 24 of the MFA Act says a regional board must not adopt a loan authorization (LAB) or security issuing bylaw on its own or on a member's behalf unless the financing is undertaken by MFA. (Shorter-term capital borrowing can proceed without MFA per sections 181 and 182(1) CC). A municipality must not borrow money under LAB unless the financing is undertaken by the RD through the MFA, and the RD board consents to undertake the financing.

The advantage of long-term borrowing under an LAB: the liability incurred is debenture debt. Therefore, the RD security issuing bylaw provides regional joint and several security as protection for lenders from default, reducing risks of debentures for investors.

Revenue

Municipalities can use fees to regulate behaviour, under section 194(1)(c) and the Supreme Court of Canada decision in relation to the carbon pricing reference. Considering emergency and disaster, climate change, economic and other challenges in the coming decades, regional districts have requested the same authority to impose fees.

Also, some have proposed fees as a tax (collected in the same way as existing user fees) for services like sewer, water, sewage treatment could encourage things like water conservation.

Additional revenue sources for rural areas, based on precedents in other jurisdictions, include hotel room revenue tax, fuel tax, resort tax, portions of income tax or sales tax, business tax. Although regional districts on the surface seem to have discretion to impose a tax or not, any imposition in relation to establishing a service would require a buy-in from the ratepayers/electors**.**

Financial contributions from Crown corporations are not calculated or paid in a balanced or equitable manner. Current grants in lieu of taxes do not satisfy the requirements for "reasonableness".

Approving Officers

Large areas of land outside municipal boundaries are developing rapidly. The recent enactment of Bill 44 has resulted in expectations of even more rapid development. Despite this and the regional district responsibility for the zoning and subdivision bylaws that the approving officer must comply with, it is the provincial transportation ministry staff who carry out the service and there are numerous complaints about delays due to short-staffing and lesser standards of due diligence when considering the official plan, policies of the municipal Council, and the public interest in addition to zoning and subdivision bylaws.

Land use and development

Land use and development are not part of our review, but Province could consider legislation to address several specific issues raised consistently by regional districts in addition to approving officer roles:

- Crown corporations are not subject to regional district regulatory bylaws given section 14(2) *Interpretation Act*

- Fringe area development (in rural areas contiguous to municipalities) generally has not benefitted from effective joint planning processes in the context of the land ultimately becoming boundary extension areas for the municipalities. Planning in these areas is not effective joint planning, and subdivisions/servicing are administered by Highways staff acting as approving officers

- Regional districts attempting to protect aquifers or other natural resources have lost court cases repeatedly over the supremacy of mining permits that go beyond the provincial interest, so regional districts are looking for a degree of balance in the legislation. The removal of gravel, and the operation and remediation of gravel pits, generally escape regional district soil removal and pit remediation bylaws and permits merely due to the legislation and regulations protecting "mining" permits.

Integrity and safety

Local governments in all the regions are under attack by groups of residents. The harassment in many cases is dangerous for electeds and staff, and is resulting in council and board members resigning or deciding not to run again. Currently, the legislation allows for a chair to remove an individual for "improper conduct". Too often, the police do not or can not back this up by attending the public meeting and removing the individual. Threats against elected officials are routine, whereas they were rare ten years ago.

Regional district elected people need to be protected from harassment and fear of harm. Staff need a safe workplace. Currently, a solution is holding electronic meetings instead of in-person meetings.

Elected officials are also routinely defamed, but under the LGA a regional district is prohibited from indemnifying them for suing the perpetrators, even when the attack is within the scope of the director's regional board responsibilities and role.

DRAFT RECOMMENDATIONS FOR DISCUSSION

The Province may consider the following:

1. First Nations, to the extent it meets their interests as expressed by First Nations, must be included in regional governance. Although there is currently a mechanism for treaty settlement nations to be included in regional governance, there are roughly 203 other nations and their members that do not have the right to be included. This would help address indigenous discrimination. One of the specific actions in the BC DRIPA action plan is to support inclusive regional governance by advancing indigenous participation on regional district boards. The Province should make this a high priority until it is done, but not alter the course of First Nation-regional district and other tables that are already working to build consensus on structure and function.
2. The legislation should place municipalities and regional districts on the same level plane in relation to status and recognition, since the current statute recognizes municipalities as an order of government within their jurisdiction in accordance with principles based on the municipal charter of rights adopted by the Union of British Columbia Municipalities, yet it recognizes regional districts with a lesser status. One option is to apply the wording

of section 1 CC in regional district legislation. Another option is to include regional districts in Section 1 CC.

3. The principles of municipal-provincial relations for municipalities are based on the UBCM bill of rights for municipalities, while the regional district principles for relations with the Province are restricted to five elements that are less respectful of regional district jurisdiction and interests. One option is to apply section 1 CC to regional districts. Another option is to include regional districts in Section 1 CC.

4. The provincial – municipal relations provisions in Part 9, Division 1 CC should be clarified to apply to regional districts in relation to required consultation, consultation agreements, enforcement of parties' obligations, and the restrictions on unilateral changes such as forced amalgamations. One option is to apply Part 9, Division 1 CC to regional districts. Another option is to include regional districts in Part 9, Division 1 CC.

5. Similarly, Part 9, Division 3 CC, entitled "Dispute Resolution", should be clarified to apply to regional districts in relation to disputes between regional districts and other local governments or the provincial government or a provincial government corporation. The dispute assistance, voluntary binding arbitration, mandatory binding arbitration, final proposal arbitration, full arbitration, and other provisions could provide practical solutions for regional districts encountering disputes. One option is to apply Part 9, Division 3 CC to regional districts. Another option is to include regional districts in Part 9, Division 3 CC.

6. Regional districts should have "natural person powers" (legal capacity, rights, powers, and privileges of a natural person of full capacity).

7. Regional boards should have the broad, overarching regulatory authority of a municipality under section 8 CC in the rural areas to regulate, prohibit, or impose requirements in relation to regulatory matters, subject to provisions analogous to sections 9 and 10 and Part 3 CC.

8. Without limiting the recommendation in paragraph 7, regional districts should have the authority such as that under section 8 of the Community Charter to impose requirements in relation to their areas of regulatory authority, except in relation to firearms and business.

9. Regional boards in a regulatory bylaw should be able to provide for a system of licenses, permits, or approvals and take advantage of the list of regulatory standards and controls countenanced under section 15 CC, without being limited to a service.

10. The regional district authority to enter on property should be modernized to be the same as for municipalities in section 16 CC.

11. In order to be proactive and take leadership in the context of potential catastrophes, the Province and regional districts need to consider options for application of a regional district building regulation bylaw without prior establishment of a building bylaw regulatory service.

12. To address climate change, adaptation, and resilience, regional districts need the same building regulation authority as municipalities, and not the limited list essentially from the1979 Municipal Act, to deal with building construction in rural areas where the regional districts have elected to provide for building inspections and regulation.

13. Regional district legislation should be augmented by a provision like section 10 CC to provide that a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not by this contravene the other enactment.

14. The process for establishing rural area services, paying for them, and getting taxpayer buy-in for the services, could be streamlined to be like the municipal local area service regimes, taking advantage of all the experience and case law related to such schemes. This would also eliminate much of the delay and regional district administrative capacity issues about which regional districts have complained.

15. The interface between the LGA and other provincial statutes needs to be reviewed and clarified for practical purposes – for example, the *Environmental Management Act* and statutes governing water.

16. There is virtually unanimous agreement that the cross reference provisions in the LGA (for example, referring to CC provisions) should be spelled out in new regional district legislation in lieu of the internal cross references or the regional district and municipal provisions that are identical should be in one statute.

17. Regional board vote calculation rules need to be rewritten so that any citizen or regional district employee can understand them and so they are not internally inconsistent and self-contradictory.

18. The electoral area alternate scheme may require a review in the context of best practices, along with the scope of responsibility for individual electoral area directors in vast geographical areas.

19. Most regional districts are not ready to appoint approving officers, but there are many who would like to do so to deal with growing areas and fringe-boundary areas. Accordingly, the time has arrived to establish boundaries for regional district appointed approving officers to deal with rural roads and allow regional districts to appoint approving officers instead of having provincial highway officials apply the regional district land use bylaws and public interest.

20. No one wants to consider change to the joint and several scheme that is foundational for the bond rating of the Municipal Finance Authority. That entails budgeting, spending, borrowing, liabilities, and collections. That said, some regional district officials have suggested the Province would be well advised to consider some changes that are not integral to supporting the bond rating:

    - direct collection of property value taxes in rural areas and modernizing the process and timing for municipal requisitions and payments;
    - consideration of a review of the fairness of the disposition of the "school" portion of property taxes;
    - consideration of the fairness of paying for capital costs of health and hospital facilities;
    - the process for distributing grants to regional districts when either the rural or municipal directors control the vote on disposition in the rural nor municipal area;
    - establishment of revenue sharing schemes for all areas of the Province based on successes such as Fair Share in the Peace Country and the Columbia Basin Trust.

21. Municipalities can use fees to regulate behaviour, under section 194(1)(c) and the Supreme Court of Canada decision in relation to the carbon pricing reference. Considering emergency and disaster, climate change, economic and other challenges in the coming decades, regional districts have requested the same authority to impose fees.

    Also, some have proposed fees as a tax (collected in the same way as existing user fees) for services like sewer, water, sewage treatment could encourage things like water conservation.

22. Acknowledging the work of UBCM regarding revenue sources, some regional districts would like consideration of additional revenue streams for rural areas, based on precedents in other jurisdictions. This would include consideration of hotel room revenue tax, fuel tax, resort tax, portions of income tax or sales tax, business tax. Although regional districts on the surface seem to have discretion to impose a tax or not, any imposition in relation to establishing a service would require a buy-in from the ratepayers/electors.

23. Financial contributions from Crown corporations are not calculated or paid in a balanced or equitable manner. Current grants in lieu of taxes do not satisfy the requirements for "reasonableness". Some regional districts would like to see consideration of this inequity.

24. Some have called for review of the AAP process: is the approbation by electors fair when the renters can out-vote the owners and businesses that pay the taxes? Also, is 10%

reasonable in a community where the population is less than 500 or so? Also, are the thresholds for requisitions in section 345 outdated?

25. Land use and development are not part of our review, but Province could consider legislation to address several specific issues raised consistently by regional districts in addition to approving officer roles:

    - Crown corporations should be subject to regional district regulatory bylaws, despite section 14(2) *Interpretation Act;*

    - fringe area development (in rural areas contiguous to municipalities) could benefit from effective mandatory joint planning processes in the context of the land ultimately becoming boundary extension areas for the municipalities. As stated, subdivisions/servicing should not be administered by Highways staff acting as approving officers;

    - regional districts attempting to protect aquifers or other natural resources have lost court cases repeatedly over the supremacy of mining permits that go beyond the provincial interest, so regional districts are looking for a degree of balance in the legislation. The removal of gravel, and the operation and remediation of gravel pits, generally escape regional district soil removal and pit remediation bylaws and permits merely due to the legislation and regulations protecting "mining" permits.

26. Local governments in all the regions are under attack by groups of residents. The harassment in many cases is dangerous for electeds and staff, and is resulting in council and board members resigning or deciding not to run again. Currently, the legislation allows for a chair to remove an individual for "improper conduct". Too often, the police do not or can not back this up by attending the public meeting and removing the individual. Threats against elected officials are routine, whereas they were rare ten years ago.

    Regional district elected people need to be protected from harassment and fear of harm. Staff need a safe workplace. Currently, a solution is holding electronic meetings instead of in-person meetings.

    The Province can consider legislation for civil and administrative processes to facilitate applications to court for a new tort of harassment and for orders in the nature of injunctions. A civil form of peace bond could be explored. The *Trespass Act* could be expanded to address bylaw-prohibited or dangerous entry in regional district facilities.

    Elected officials are also routinely defamed, but under the LGA a regional district is prohibited from indemnifying them for suing the perpetrators, even when the attack is

within the scope of the director's regional board responsibilities and role. The Province could consider something like allowing boards to indemnify an elected official for costs of a defamation suit when the board has an opinion that the official has been defamed.

27. Fundamental to an analysis of regional districts, including the structure, funding processes, and voting rules, is whether regional districts continue to operate with service silos, how the interests of municipalities and rural areas can be balanced and protected in a fair way, and how to ensure that decision making is based on fair representation. It may not be necessary to alter these fundamentals if the processes and empowerment on the other fronts are modernized along the lines of the *Community Charter*. Also, it may be that Metro Vancouver Regional District does not fit any of the paradigms described in this document, given the special water/sewerage/drainage utility statutes, the relative absence of rural areas, the size of the current board, the magnitude of capital projects, the absence of a "Metro regional hospital district board", the focus of grants on transit, and the perceptions about citizen representation.

REVIEW OF CURRENT LEGISLATION

PART 5 – Regional Districts: Purposes, Principles and Interpretation

Purposes of regional districts

185. Under section 1 CC, municipalities are recognized as an order of government within their jurisdiction. Regional districts are recognized as an independent, responsible and accountable order of government within their jurisdiction. The distinction is set out in section 1(2) CC: municipalities are stated to need adequate powers and discretion to address community needs, have authority to determine public interest and balancing differing interests, can draw on adequate financial resources, and have authority to deliver services. This section does not exist for regional districts, presumably because the LGA does not provide for the same levels of independence, powers, financial resources, or service delivery authority as municipalities.

Principles for regional district-provincial relations

186. The principles of municipal-provincial relations for municipalities are based on the UBCM charter, while the regional district principles for relations with the Province are restricted to five elements that are less respectful of regional district jurisdiction and interests.

The following elements of municipal-provincial cooperation are missing from the LGA in relation to regional district cooperation:

- Province respects municipal authority
- Province must not assign responsibilities to municipalities without resources

- Province must consider municipal interests when in discussions with other governments on municipal matters
- Province should resolve conflicts with municipalities by consultation.

In addition, there is an entire body of provisions of the CC regarding provincial-municipal relations that is missing for regional districts. Section 284 CC provides for a dispute resolution process if a dispute arises between a municipality and the Province or a provincial corporation (or between a municipality and another local government). Part 9, Division 3 CC, entitled "Dispute Resolution", could be clarified to apply to regional districts in relation to disputes between regional districts and other local governments or the provincial government or a provincial government corporation. The dispute assistance, voluntary binding arbitration, mandatory binding arbitration, final proposal arbitration, full arbitration, and other provisions could provide practical solutions for regional districts encountering disputes. One option is to apply Part 9, Division 3 CC to regional districts. Another option is to include regional districts in Part 9, Division 3 CC.

Broad interpretation

187. Section 187 LGA is virtually the same as section 4 CC.

Section 10 CC, however, is missing from the LGA in relation to regional districts. It says that a bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not by this contravene the other enactment.

Application of municipal provisions to regional districts

188. This is a major area of complaint. There are numerous places in the LGA where the legislation cross-references provisions of the CC to interpret and apply the LGA provisions. This is a problem for citizens, elected officials and staff, and could be a problem when matters go to a court.

If one is reading the LGA, it is necessary to open the CC and understand and apply the connected cross-references – this is difficult when attempting to read the LGA online, especially on a pad or mobile.

It is also difficult to find a provision of the CC that people think may apply to a matter, unless one reads through all the provisions of the LGA that may be relevant. For example, and there are many examples, a corporate officer recently called and said all the staff and Chair tried to find the section that authorizes the chair to subpoena witnesses through a committee. Another example is where staff call and say that section 205(1((c) LGA refers to regulations in relation to Division 6 of Part 4, but they cannot find that Part in the LGA. Ultimately, answers can be found by staff or lawyers who have time, but the content and layout of the LGA are confounding for most users, especially when answers or questions need to be addressed in a meeting.

I asked for examples and received numerous references. This one is "popular":

(1) A board may, by bylaw, regulate in relation to business under

(a) Divisions 1 *[Purposes and Fundamental Powers]* and 3 *[Ancillary Powers]* of Part 2 of the *Community Charter*, and

(b) Division 9 *[Business Regulation]* of Part 3 of the *Community Charter*.

(2) The making of a bylaw under subsection (1) is subject to

(a) the regulations made under subsection (3), and

(b) Division 5.1 *[Restrictions in Relation to the Passenger Transportation Act]* of Part 3 of the *Community Charter*.

There is virtually unanimous agreement that the cross referenced provisions should be spelled out in new regional district legislation in lieu of the internal cross references or the regional district and municipal provisions that are identical should be in one statute.

References to regional district officers

189. Section 189 is the same as section 4 of the Schedule to the CC. That said, it would be more useful if located in the "officers and employees" section of the LGA.

Continuation of regional districts

190. When the CC was enacted in 2003, there was a separate statute to address transitional matters. This is an option when considering regional district legislative reform in relation to matters under sections 190 through 192. The municipal transitional statute was the *Community Charter Transitional Provisions, Consequential Amendments and Other Amendments Act, 2003.*

Continuation of regional parks and trails

191. See section 190.

Continuation of regulatory authority restrictions in relation to previous bylaws

192. See section 190.

PART 6 – Regional Districts: Governance and Procedures

Division 1 – Regional Districts and Their Boards

Regional district corporations

193. This section says each regional district is a corporation. A municipality is a corporation of the residents of its area. One may argue that the Legislature must have intended the regional district provision to have a different meaning, since an inference may be drawn that the express

reference to residents in one is to exclude an aspect of that notion in the other, or to restrict or to "read down" the regional district corporate ambit.

Board as governing body

194. The provisions are essentially the same for municipalities and regional districts (incidental powers are in section 294 CC).

Area of jurisdiction

195. This section says a board may exercise or perform its powers, duties and functions only within the boundaries of the regional district unless authorized under this or another Act.

Section 14 (2.1) CC says a regional district and one or more municipalities may, by bylaw adopted by the board of the regional district and by bylaw adopted by the council of each *participating* municipality, establish an intermunicipal scheme in relation to the regulation of business. Despite the potential advantages of this, section 14 has been interpreted as restricting the powers to areas inside the regional district and to "municipal participants", which also connotes the need for a business regulation and licencing service. It is unclear whether this express restriction operates as a "specific limitation" for the purposes of section 332 which otherwise provides general authority for services outside the area.

Although section 195 LGA does not say so, sections 261 and 333 allow services in relation to treaty lands outside the area and operation of the service outside the area.

What is also unclear is the extent of regulatory and enforcement powers outside the regional district beyond section 332(4), which limits this to cases where the regional district has established works or facilities outside the regional district for the purposes of a regional district service. In comparison, section 13(3) CC says that if consent is given by the neighbour jurisdiction, all municipal powers, duties and functions in relation to the service may be exercised in the area.

Division 2 – Board Members

Composition and voting rights

196. Section 196 is subject to section 253 LGA (treaty First Nation directors), but the entire LGA is silent on First Nation and Indigenous individuals' participation and inclusion.

First Nations have had traditional governments for at least 10,000 years. Regional districts have existed since 1965. Despite this history, First Nation governments and members are not included in regional district governance (except in the limited circumstances where there is a treaty settlement area).

British Columbia has adopted the Declaration on the Rights of Indigenous Peoples Act ("DRIPA") to incorporate into BC law formally the indigenous rights instrument of the United

Nations entitled the "United Nations Declaration on the Rights of Indigenous Peoples" ("UNDRIP"). DRIPA sets out a process to align British Columbia laws with UNDRIP, and the provincial action plan provides for ending indigenous specific discrimination and promoting economic well-being. One of the specific actions in the BC action plan is to support inclusive regional governance by advancing indigenous participation in regional district boards. This was supported by UBCM in its July 30th, 2021 submission. There are also several UBCM resolutions to support this.

First Nations must be included in regional governance. Although there is currently a mechanism for treaty settlement nations to be included in regional governance, there are roughly 190 other nations and their members that do not have the right to be included. This would help address indigenous discrimination. One of the specific actions in the BC DRIPA action plan is to support inclusive regional governance by advancing indigenous participation in regional district boards.

The number of votes to which a director is entitled is calculated under section 196. Regional districts have complained about four aspects of this.

First, for purposes of voting power on a board, a change in population of a municipality or electoral area as established by census takes effect in the year following the year in which the census was taken [section 196(3) LGA]. This has created unbalanced weighted vote calculations between censuses [note – NOT censi, per the Oxford English Dictionary]. The last census was in 2021. Therefore, the voting power numbers crystalized in 2022, although many people moved after 2021 due to the pandemic. The next census is May 2026, so the new voting powers will apply in January 2027, arguably a long time from May 2021 in a province that grew nearly 8% from the 2016 census to the 2021 census (and where, for example, Cumberland grew 18.5% and K'omoks First Nation grew 31.1%.

Second, section 196 (regarding the calculation of the weighted vote) is not conclusive. It makes no mention of section 208(1) which says that the general or default rule is that each director has one vote, not the weighted vote that is established under section 196. Although this question arises regularly, I think that applying Driedger's "modern principle" of statutory interpretation that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and not be concerned about clause like "subject to section 196", one can construe section 208(1) LGA as being subject to the rest of Division 2, including sections 196(2) and 209 through 211.

Third, every regional district corporate officer, and others, have complained about the vagueness created by the voting rules, discussed in Part 6, Division 3 below.

The reference to the "census" arises routinely. According to the ministry web site dealing with population figures for voting strength, "the minister responsible for the CC is responsible for determining population figures for an area if those are not determined by census". That is, section 196 governs the application of the census for calculating voting power, but if a change is

triggered outside of this (e.g., boundary extension), the minister can determine figures between censuses. The web site says: "…for example, if the boundary of a municipality is extended to take in a portion of an electoral area in the years between federal censuses". That being the case, many have asked why the minister cannot carry out this inter-census activity formally for all calculations instead of waiting 5.5 years. In the original 1965 legislation, section 770(4) of the Act provided that where the population of an area has not been established by census, its population is determined by certificate until determined by census. This has been replaced by section 1 CC of the Schedule to the *Community Charter* (which applies to regional districts under section 40 of the *Interpretation Act*), which says that "population" means "population determined by the minister" if not established by census.

Fourth, in practice the statutory distribution of votes is unbalanced or inordinate for some regional districts. For example, a 2019 report from Central Okanagan Regional District stated the following:

> The concern expressed by some Board members was the City of Kelowna has 7 of 13 representatives on the Board creating a situation where one jurisdiction in the RDCO carries the weighted and unweighted corporate vote on all matters, excluding services Kelowna does not participate in. This is less than optimal from a governance perspective and creates operational challenges for City of Kelowna Council members. Based on current growth projections for our region, this disparity will worsen in the years ahead.

A Comment on s. 3 Charter of Rights and Freedoms

By way of analogy, it may be useful to consider section 3 of the *Canadian Charter of Rights and Freedoms* which provides every citizen of Canada with the right to effective representation. Canadian courts have held that divergence from absolute parity of voting power is justified: (1) on the grounds of practical impossibility; and (2) where one or more factors indicate that divergence from parity results in more effective representation. Any divergence from voter parity must be justified by evidence on a constituency-by-constituency basis.

While effective representation begins from the principle of parity of voting power (i.e. one person one vote), the Supreme Court of Canada held in *Saskatchewan Reference* that voter parity is not the only factor to be considered in ensuring effective representation. Rather, in some instances factors such as geography, community history, community interests, and minority representation must be considered to ensure that governments effectively represent the society that elects them.

In many Canadian provinces, general rules for permitted population variance are set out by the provincial legislatures. For example, in Alberta and British Columbia (among others), legislation governing provincial electoral districts permits electoral districts to be up to 25% above or below the average population per district.

Although the Supreme Court of Canada has held that variance from voter parity is permitted where it leads to more effective representation, having regard to a variety of factors, those deviations must be justified and reasonable. In *Dixon v. British Columbia,* (1986) 7 C.C.L.R. (2d) p.174, McLachlin J. (as she then was) held that there was no explanation, geographical, or otherwise, for several significant divergences, and on that basis found the legislative scheme of electoral districts in British Columbia unconstitutional.

Based on this jurisprudence, it is clear that there must be very specific justification, on an area by area basis, for variance from parity. This is especially true where the variance exceeds 25%. However, due to the small amount of case law on section 3 of the *Charter*, it remains somewhat uncertain what exact evidence is required to demonstrate that factors other than population demonstrate that variance results in more democratic representation.

One issue that comes up: are municipal directors obligated to vote in accordance with the municipal interest, or can they vote their conscience? There is no express provision in the LGA on this, but a Council can replace a municipal director appointed to a board (subject to procedural fairness), and this has occurred where a director has voted against the will of the mayor or council.

Under section 115(a) CC, municipal councillors must "consider the well-being and interests of the municipality" and section 116(2)(g) CC requires mayors to "reflect the will of council". The oath in the Reg does not address this. These factors suggest that municipal directors are free to vote their conscience legally, but not always politically.

Municipal directors are also free from making conflict declarations where the conflict arises only because of wearing two hats, on the board and council. Accordingly, the statutory regime not only authorizes but mandates that regional district boards will partly consist of councillors from their member municipalities. Typically, the application of this exception is straightforward, and entitles the otherwise conflicted member to participate as if no conflict exists. The court considered the principle in *Save St. Ann's Academy Coalition v. Victoria (City)*.

Municipal directors: number of directors and assignment of votes

197. See comments for section 196.

Appointment and term of office for municipal directors

198. I am not aware of issues.

Election and term of office for electoral area directors

199. This is the first instance in the Act where the term "electoral area" and "electoral area directors" appears. The term first appeared in the 1965 legislation, along with "unorganized territory", and was originally coined by Dan Campbell, the then minister. There is no legal issue

with this phraseology, but there are routine calls by Electoral Area Directors for a title change given the alleged awkwardness trying to explain the term to voters or constituents.

Given rampant conspiracy theories arising primarily during the pandemic, the directors and staff have also countenanced confusion from the public, with references to things like precursors to climate lockdowns, restrictions on travel, and a World Economic Forum (WEF) scheme. There is also confusion with electoral areas under the federal and provincial election legislation – the first page of "electoral area" on a Google search yields mostly references to federal and provincial election districts.

I make no recommendation but have heard the following ideas proffered by directors: Roberts Creek; Roberts Creek Area; Ward. For rural directors, I have heard: Director of Ward A or Roberts Creek Ward, Area A Director, Director of (insert actual geographic area name, such as Halfmoon Bay or Roberts Creek"), or "Mayor" (seriously). In this regard, it was pointed out to me that the constituency of a provincial MLA is not called Electoral Area X or Area 51 but has a geographical name such as "Vancouver – Mount Pleasant".

Alternate directors: municipalities

200. The alternate director concept is controversial. See section 201.

Alternate directors: electoral areas

201. This concept is controversial because of abuse and concerns about democratic representation. There are meetings where the elected director is in the meeting venue but where the alternate is at the table voting.

Some elected directors have opted to attend meetings only enough to keep from being disqualified, allowing the unelected alternates to debate and vote most of the time.

One suggestion is that alternates may not be required now given the ease with which elected directors can attend meetings remotely electronically, and from the concept of delegated authority to hold hearings.

Oath or affirmation of office for board members

202. There is a penalty for an elected director who fails to make the required oath [section 202(4)], but not for an alternate.

Section 202(7) refers to an oath of allegiance. An oath of allegiance is a pledge of loyalty to a country or monarch. In Canada, the oath of allegiance is to the King of Canada. This may not be reasonable when Indigenous directors or others join a board, and it is not included in the Community Charter for municipalities.

Resignation from office

203. A resignation becomes effective when it is received by the corporate officer, even if a later date is set out in the resignation, whereas a municipal member resignation is effective from a date in the resignation or from the time it is delivered.

Director disqualification for failure to attend meetings

204. If a municipal council member is disqualified for not attending meetings, they are disqualified from holding office on a local government, on the council of the City of Vancouver or on the Park Board, or as a trustee under the *Islands Trust Act*. This does not apply to disqualified regional directors.

Regional district directors: application of *Community Charter*

205. See the discussion above in section 188.

Division 3 – Voting and Voting Rights

206 – 214. One of the major areas of complaint: ascertaining who at the regional board votes on a matter, and whether their vote is calculated as a single or weighted vote. Municipal lawyers hear about this every week from every regional district (except Metro), and sometimes there is no clear answer in the legislation. In addition, perhaps due to various amendments being made over the years, the vote calculation rules are internally inconsistent and difficult to ascertain.

Fundamental to an analysis of these voting rules is whether regional districts continue to operate with service silos, how the interests of municipalities and rural areas can be balanced and protected in a fair way, and how to ensure that decision making is based on fair representation. It may not be necessary to alter these fundamentals if the processes and empowerment on the other fronts are modernized along the lines of the *Community Charter*. Also, it may be that Metro Vancouver Regional District does not fit any of the paradigms described in this document, given the special utility statutes, the relative absence of rural areas, the size of the current board, the magnitude of capital projects, the absence of a "Metro regional hospital district board", the focus of grants on transit, and the perceptions about citizen representation.

Examples of confusion:

- Can a non-participant move or second a motion regarding a service if it impacts them even if they are not a participant?
- Do all directors vote on an OCP amendment, even if it is not their area?
- Can municipal directors vote on Board consent to the municipality providing a service to a rural area?
- Is the mayor's responsibility to reflect the will of the municipal council is a consideration that the mayor should consider when making decisions at a regional board table?
- Can municipal directors vote on Bylaw Enforcement service matters in rural areas?

- Who votes to appoint board of variance or APC members?
- What is process for disputing interpretation of voting rules by chair and corporate officer and do we need validating legislation when they are wrong?

Division 4 – Board Chair and Committees

Chair and vice chair of board

215. No comment.

Responsibilities of chair

216. This section says the chair is the chief executive officer of the regional district. The same applies to Mayors in the CC. One of the recommendations for reducing harassment and bullying of staff by Mayors, in the workplace health and safety context, is to clarify the statutory role of the chief executive officer versus that of the chief administrative officer. The CEO designation gives mayors a sense that they can carry out CAO duties and, in any event, overrule the CAO on management matters. Although this is prohibited in Alberta and other provinces, the practice exists in BC and the friction has caused resignations and terminations of CAOs. This should be reviewed in the broader context.

Chair may require board reconsideration of a matter

217. This should say "Without limiting the authority of a board to reconsider a matter"…to clarify that a board can return a matter for reconsideration whether the chair acts.

Appointment of select and standing committees

218. A mayor's standing committee requires at least half of the members to be council members, while a chair's standing committee requires only one director to be a member. This may be a reasonable function of geography.

Section 144 CC says the authority to appoint includes the authority to rescind an appointment. This does not appear to be available to regional boards or chairs, and section 27(4) *Interpretation Act* does not cover this.

Division 5 – Board Proceedings

Regular and special board meetings

219-220. The regular and special meeting and notice provisions in the LGA are more concise than in the CC, while covering the same ground, and unlike the CC allow two directors to call a special meeting without waiting for the chair to fail to call a meeting.

Electronic meetings and participation by members

221 - 222. Regulations establish these rules. No comment.

Minutes of board meetings and committee meetings

223. The CC provides that the taking and certification of minutes must be set out in a mandatory procedure bylaw. For regional districts, these rules are set out in section 223 of the Act instead of authorizing the board to set this out in its procedure bylaw. This is another example of municipalities having more autonomy.

Meetings and hearings outside regional district

224. This is effectively the same as section 134.1 CC.

Procedure bylaws

225. Section 124 CC says a council may in a procedure bylaw establish the procedure for designating a person under section 130 *[designation of member to act in place of the mayor],* to ensure the procedure is fair. This may be advisable in a board procedure bylaw regarding election of a chair and vice chair.

Board proceedings: application of *Community Charter*

226. See comment in section 188.

Division 5.1 – Proceedings of Other Bodies

Electronic meetings of other bodies

226.1 – 226.2 It is not clear if this form of meeting requires an LGA amendment to include this in a procedure bylaw and/or a regulation, given that there is authority for regulations for board/committee electronic meetings but not for "other bodies".

Division 6 – Bylaw Procedures

Bylaw procedures: application of *Community Charter*

227. CC bylaw procedures apply.

Bylaw adoption at same meeting as third reading

228. No one disagrees with this.

Division 7 – Delegation of Board Authority

Delegation of board authority

229. Under this section, a board may not delegate a power or duty to appoint or suspend a regional district officer, but under section 154(3) CC a council may delegate a power or duty to appoint or suspend an officer to its chief administrative officer. For regional districts, this varies from the "one employee" model in effect for local governments in most of Canada.

Bylaw required for delegation

230. No comment.

Delegation of hearings

231-232. No comment.

Division 8 – Officers and Employees

Officers and employees for regional district

233. Section 233(3) says board may, by an affirmative vote of at least 2/3 of the votes cast, provide for the inclusion of its regional district in an employers' organization under the *Labour Relations Code*. This is continued from older legislation [section 188(3)(a) *Municipal Act*, SBC 1957, c. 42]. A municipality may do this under its natural person powers, which regional districts do not have.

Officer positions

234 - 237 Same as CC.

Oath of office for officers

238. This applies to regional district officers. The LGA and the oath regulation provide for this. Municipal officers under the CC are not subject to an oath.

Chair to direct and inspect officers and employees

239. This is an archaic provision, derived from section 179(d) of the *Municipal Act*, SBC 1957, c. 42.

Suspension of officers and employees

240 – 242. Same as CC.

Division 9 – Local Community Commissions

Establishment of local community commissions

243 - 245. The advantages of the LCC: some community autonomy and empowerment for areas that are nearly ready for incorporation; advice for the rural director and board for a remote area in a large electoral area district (although the director is one of the commissioners); local input on budgeting and services; governance participation by electors who have a high interest in the services and costs in the area; and local knowledge for better governance. The disadvantages: sometimes the LCC becomes the official opposition and consistently attacks the board and director, LCC members and supporters can be frustrated by the limited powers and resources of the regional district and do not always get what they recommend, the LCC is subject to board

policies and bylaws on things like procurement or service standards, and the board not the LCC must pass with any bylaws or budget.

That said, although regional district employees provide the staffing support, the board can delegate executive and administrative tasks for the LCC, such as expenditures under an approved budget.

Examples of LCCs over the years: Bear Lake, Regional District of Fraser-Fort George; Charlie Lake, Peace River Regional District; Coal Harbour, Regional District of Mount Waddington; Fort Fraser, Regional District of Bulkley-Nechako; Olalla, Regional District of Okanagan-Similkameen.

Given the actual and perceived governance role of LCCs, and potential for delegated administrative powers, assent makes sense. None of the affected regional districts, however, can explain why they may need provincial approval. This approval may be a throwback to the time the LCCs were created by 1977 legislation, when the Province approved nearly every regional board bylaw.

Division 10 — Other Matters

Giving notice to regional districts

246. This is the same as for municipalities in section 159 CC. Although many people, including lawyers, erroneously serve or deliver notices on the Chair, the CAO, or the director, the regional districts typically accept the document. Municipal lawyers, however, like this section because it gives the local government a potential statutory defence if the server is up against tight time limits.

The reason people erroneously serve pleadings on the wrong parties is partly due to the bylaw challenge and lawsuit provisions in sections 623 and 735-6 LGA do not mention the corporate officer or section 246 LGA.

Notice by regional district: obligation satisfied if reasonable effort made

247. Same as section 160 CC (and section 466(8) LGA).

Regional district records: application of *Community Charter*

248. This cross-references sections 162 and 163 CC.

The CC contains a useful provision (section 161) that is use routinely, and importantly, that is missing from the LGA: court allowing substituted service. This became more useful during and after the 2020-22 pandemic when individuals or companies moved or became insolvent.

Regulations to provide exemptions from Provincial approval requirements

249. This section could be more useful if used more often. Currently, there is a regional district establishing bylaw regulation that provides exemptions from approvals that would otherwise apply to establishing bylaw boundaries or requisition limits.

A review of all the provincial approval requirements raises questions about whether provincial staff approval of so many regional district decisions is warranted at this time, given that the statutory requirements for approvals for village bylaws was repealed long ago. An example is a service bylaw, where a village can establish a local area service but next door in the rural area the regional district can be required to get provincial approval even if there is no borrowing. No one, on the other hand, disputes the need for provincial approval of loan bylaws.

PART 7 – Regional Districts: Treaty First Nation Membership and Services

Treaty first nation membership in regional district

250 - 262. I am not privy to any complaints or concerns about this Part.
As stated in paragraph 1 in the Executive Summary and paragraph 1 in the Draft Recommendations for Discussion, First Nations other than Treaty First Nations will need to participate in regional district governance. The Province should make this a high priority until it is done, but not alter the course of First Nation-regional district tables that are already working to build consensus on structure and function.

PART 8 – Regional Districts: General Powers and Responsibilities

Division 1 – General Powers

Corporate powers

263. Municipalities in virtually every province have "natural person powers" (legal capacity, rights, powers, and privileges of a natural person of full Capacity) to make agreements, acquire or dispose of property, delegate authority, participate in commercial/industrial undertakings, higher/fire and other things that a natural person can do. Regional districts, on the other hand, are limited to express corporate powers of a board listed in section 263 LGA. Section 263(1)(a) through (d) and (f) would not be necessary if natural person powers were included.

Section 263 LGA derives essentially from section 786 of the 1979 revised statutes. The current authority to make agreements is restricted to agreements regarding services or property management. It is an interpretive problem to have section 263(1)(b)(i) refer to activities, works, or services, while section 263(1)(a)(i) only extends to services, despite the more general definition applied in the CC schedule under section 40 of the *Interpretation Act*.

Section 263(1) (e) and (g), regarding delegation and commissions, are the same as the related CC provisions.

Minister approval required for certain out-of-Province or out-of-country agreements

264. No one to my knowledge can remember why this section was added. It does not apply to municipalities.

Inspector approval required for incorporation or acquisition of corporations

265. This is the same as section 185 CC.

Division 2 – Public Access to Records

Public access to regional district records

266 - 267. This is the same as section 95 CC. However, section 95 CC also says the disclosure does not apply to records that must not be disclosed under FOIPP, while section 266 is silent on this and section 267 limits this prohibition to records that are agreements in relation to matters requiring approval of the electors.

Other public access requirements: application of *Community Charter*

268. This is a cross reference to section 97 CC.

Division 3 – Approval of the Electors

Processes for obtaining approval of the electors

269. This is the same as section 84 CC.

Approval of the electors: applicable rules

270. This is effectively the same as section 84 -85 CC, except it also incorporates by reference the authority for AAP forms prescribed under the CC.

Division 4 – Providing Assistance

Definition of "assistance"

271. This is the same as the definition in the CC Schedule and section 25(1) CC.

Publication of intention to provide certain kinds of assistance

272. This is the same as section 24 CC.

General prohibition against assistance to business

273. This is the same as section 25(1) CC, except it refers to industrial, commercial, or business undertakings while the CC refers to "business" a s defined in the CC Schedule which arguably includes all the above.

Exception for assistance under partnering agreements

274. This is the same as section 21 CC, except section 274 is subject to section 277 LGA instead of simply referring to exemptions from taxes or fees.

Exception for assistance in relation to utilities, mountain resorts or high-speed internet services

275. This provides unique authority for assistance in relation to several specified regional district services, such as electric power utilities.

Exception for heritage conservation purposes

276. This is the same as section 25(2) and (3) CC.

Limitation on assistance by means of tax exemption

277. This is essentially the same as section 21(b) and 25(1)(b) CC.

Division 5 – General Property Powers

Reservation and dedication of land for public purpose: application of *Community Charter*

278. This is a cross reference to section 30 CC.

Control of Crown land parks dedicated by subdivision

279. Under section 29 CC, park land created by a plan is vested in a municipality. Under section 279(1) LGA, park land created by a plan to vest in the Crown, results in "possession and control" of the Crown land, something that municipalities had under the *Municipal Act* before the CC. Both municipalities and regional districts own park land dedicated by subdivision under section 519(1)(a) or 567 LGA, but the regional district takes a payment in lieu under section 510(1)(b) only if it operates a community park service.

Disposition of regional parks and trails

280. This section makes sense for regional parks and trails and is analogous to the municipal park disposition provisions.

Exchange of park land: application of *Community Charter*

281. Section 27 CC applies. It may be timely to consider transition from the historical treatment of rural land dedicated for park with title vested in the Crown, for purposes of section 279, 281(1)(a), and 281(3) LGA.

Power to accept property on trust

282. This section would not be necessary if the regional district has natural person powers plus a reference to section 183 CC and section 87 of the *Trustee Act*.

Plans respecting use of local government right of way

283. This section would not be necessary if the regional district has natural person powers.

Authority to enter on or into property: application of *Community Charter*

284. Considering the authority to enter on property, the cross reference in section 284 LGA appears to contain an error, by omitting sub-section 16(6) yet going on to limit the ambit of that sub-section even though it has been omitted.

The authority to discontinue providing a utility or service to a property does not apply to regional districts.

Division 6 – Disposing of Land and Improvements

Disposition of land and improvements

285. Municipalities may dispose of land by way of natural person powers. Other than in the notice (section 26 CC) and the need for fair market value from a business if no partnering agreement (section 25(1)), the municipality may maximize the return by selling through a public competitive process or to a targeted transferee. Regional districts, on the other hand, are restricted to sell to a more limited list of transferees.

Notice of proposed disposition

286. This is the same as municipal notice under section 26 CC, except it does not refer to the potential for a targeted transferee. This section 286 incorporates by reference section 94 CC.

Use of money from sale of land or improvements

287. This is covered essentially by sections 188 and 189 CC.

Disposal of water systems, sewer systems and utilities

288. This is essentially the same as section 28 CC. That said, section 288(3) is helpful for users of the LGA.

Division 7 – Expropriation and Compensation

Expropriation power

289. This is the same as section 31 CC. That said, the additional provision in section 289(4) is helpful for users of the LGA.

Authority in relation to services

290. This is the same as section 32 CC, except the municipal entry can also be to construct works on a private property which is often required for municipal works. In the case of regional districts, this may be useful in times of wildfires or floods.

Entry on land to mitigate damage

291. This is the same as section 32(3) CC.

Compensation for expropriation and other actions

292. This is the same as section 33 CC.

Division 8 – Other Powers

Board may seek regional district opinion

293. This is the same as section 83 CC, except that under the LGA a regional board may only seek an opinion if it is of electors of the entire regional district, not of an electoral area or other portion of the entire area.

Incidental powers

294. These powers are used, for example, to act in relation to non-compliance with bylaws or contracts. I think these powers are encompassed generally in natural person powers that municipalities have, but it may be noted that municipalities also have this under section 114(4) CC.

Emergency powers

295. This is the same as section 20 CC, except that a regional board must get at least a 2/3 majority while a council needs a simple majority. The regional districts do have the urgent voting regulation.

Additional powers and exceptions provided by regulation

296. This section has been useful over the years without triggering the *Municipalities Enabling and Validating Acts*. For example, the section has been used to provide for imposing a water or sewer fee between a municipality and the regional district, a water joint venture agreement, and *Aeronautics Act* agreements.

It is arguable that these could be covered by natural person powers in relation to agreements.

Municipalities have this "additional powers" provision under section 281 CC and also have natural person powers.

PART 9 – Regional Districts: Specific Service Powers

297-331. A regional board may regulate people or things in accordance with a limited number of specific service powers under part nine LGA. Given the broad, overarching authority of a municipality under section 8 CC, the regulatory authority of a regional board in relation to building regulation, fire/health, drainage/sewage, waste, animals, nuisances, businesses, or other things, is restricted. Objectively, regional districts have reported that their regulatory powers are

inadequate to address climate change, wildfires, flooding, heat domes, or other matters that municipalities address routinely.

There are many examples, but one is the authority to regulate tree removal on land while the municipality on a contiguous parcel has extensive authority to regulate, prohibit, or impose requirements. Oddly, regional districts had the same tree protection powers as municipalities in 1965 [then section 766AAA (5) *Municipal Act*]. Regional districts cannot regulate in relation to public places (skateboarding, etc.]. Arguably, they could establish a service to carry this out with approval of or petition from the electors.

The regulatory powers of municipalities under section 8(CC) are based on the generic broad authority model adopted by most of the provinces and territories since the mid-1990s and upheld by the Supreme Court of Canada in 2004 in *United Tax Fellowship v. Calgary,* yet the regulatory powers of regional districts continue to be based on the approach taken in the 1849 *Baldwin Act* of Upper Canada which required specific detailed statutory provisions for each regulatory bylaw. Also, the counties governing the rural areas of other provinces such as Alberta have the same regulatory authority as the municipalities.

A regional district must have participating area approval of a service before regulations can be established and enforced for that particular service, but municipalities in BC (or municipalities or counties in the prairie provinces) do not need this.

Places in British Columbia such as the heavily developed and populated but unincorporated community of Thornhill will be looking for reasonable regulation of human activities to deal with protection of the natural environment and the other things at least to the extent that these things are addressed by contiguous municipalities. The absence of the authority to provide for such regulation in populated, developing, and other areas of British Columbia has resulted in irrevocable health, sanitary, planning, environmental, and servicing problems. There are dozens of examples, but these include places like Thornhill, Charlie Lake, French Creek, and Christina Lake, and like View Royal and Colwood prior to incorporation.

Municipal councils in a regulatory bylaw may provide for a system of licenses, permits, or approvals and take advantage of the list of regulatory standards and controls countenanced under section 15 cc, whereas a regional board can only do those things in a bylaw that relates to a specified regional district service such as waste management.

Considering the authority to enter on property, the cross reference in section 284 LGA appears to contain an error, by omitting sub-section 16(6) yet going on to limit the ambit of that sub-section even though it has been omitted. The authority to discontinue providing a utility or service to a property does not apply to regional districts.

Municipalities have the authority under section 8(3) of the *Community Charter t*o impose requirements in relation to their areas of regulatory authority, except in relation to firearms or business. This was heralded as a major advancement for municipalities. It is missing from the

regional district regulatory authority, except for several limited purposes such as drainage and sewerage. Importantly, if a regional district provides a service, it cannot impose requirements in relation to the service, except in the limited instances where this is allowed (such as drainage and sewers).

As a result of the wildfires in Fort McMurray and Lytton, lawyers typically recommend adoption of preventive measures by the local governments. An example is a "fire smart" building bylaw. However, in most of the areas of the regional districts that have wildfire interface concerns, building regulation bylaws are limited to areas where the regional board has established a service in relation to "building inspection". Generally, these areas are limited, and no regulation or inspection takes place even though the British Columbia building code applies throughout British Columbia as if it is a municipal bylaw under section 4(a) of the *Building Act*.

A related concern is the restrictive content of regional district building regulation bylaws in rural areas. The authority for building regulation in section 298 LGA is word for word the same as in the 1960 *Municipal Act* (RSBC 1960, c. 255). For regional district areas that have a building service, these 1960 powers can be exercised in accordance with section 297, but in my view these powers are inadequate to fulfill application of 2024 Building Code provisions. Also, although the 2024 Code applies as if a bylaw outside the building service areas, there are no building bylaws or permits to enforce the Code.

Municipalities have useful interpretive tools in respect to the bylaws. For example, section 10 CC provides that municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not buy this contravene the other enactment. The regional district provisions are silent in this regard.

Questions that require discussion:

1. The need for a service or regulatory service to be established, versus the board regulating by bylaw in rural areas without a service (like villages),
2. The need for the Province to limit specific regulatory authority to the items listed in Part 9 LGA, versus expanding regulatory authority to that of, say, the villages within the regional district, by providing for powers to regulate, prohibit, or impose requirements under the municipalities' section 8(3) and 9 CC,
3. If the Province grants regional districts the regulatory authority in section 8(3) CC, the suite of ancillary powers and restrictions would likely be required, being sections 10 – 20 CC and Part 3 CC.

In addition, there is disagreement in the field as to what a "regulatory service" is versus a specified regulatory service. The latter is defined as exercise of fire, special health, drainage, waste, signs, irrigation, extra-territorial services, and non-"regulatory services", so that likely refers to enactment of bylaws in those areas. That means that the regulatory authority in those

specific areas can be augmented by the variation/terms/conditions powers in section 335 LGA, but it also means that regulatory service bylaws cannot be so augmented and require a service establishment bylaw (no matter how simple). "Regulatory service" is defined as regulatory authority conferred on a regional district other than a specified regulatory authority. Therefore, the advantages listed in section 335 do not apply to the regulatory service bylaws.

PART 10 – Regional Districts: Service Structure and Establishing Bylaws

Division 1 – General Service Powers

General authority for services

332. This is the same as section 8(2) CC, except for the special regional district limitations governing "services". Service meant a "function" of the regional district until the 1980s, but is currently defined as:

> (a)an activity, work or facility undertaken or provided by or on behalf of the regional district and the exercise of specified regulatory authority in relation to such an activity, work or facility, and
>
> (b)a regulatory service…

Consent required for services outside regional district

333. This is the same as section 13(CC), except it also requites approval of the Lieutenant Governor in Council, who may impose restrictions and conditions.

Services to public authorities

334. This would be covered by natural person powers if exercised by a municipality.

Authorities in relation to services other than regulatory services

335. The regulatory authority in the specific areas of "specified regulatory services" can be augmented by the variation/terms/conditions powers in section 335 LGA, but it also means that regulatory service bylaws cannot be so augmented. "Regulatory service" is defined as regulatory authority conferred on a regional district other than a specified regulatory authority. Therefore, the advantages listed in section 335 do not apply to the regulatory service bylaws.

Division 2 – Referendums and Petitions for Services

Referendums regarding services

336-337. There is a fundamental threshold question: should regional districts provide any service, like municipalities, with a combination of general taxation and user fees, or should services be tailored for and paid for by the users in the specific service area? I did not encounter anyone who took the view that the regional district, as a provider of regional services, local

services (with municipalities participating), and inter-jurisdictional services, should become like a municipality and tax everyone for services provided only to a subset – the prevailing view is that the user-pay model is fair and reasonable. At the same time, there is strong support for streamlining and modernizing the assent, consent, and approval processes. One option that has broad support is that of providing services by way of a system like the municipal local area services. There would be buy-in under assent, AAP, or petition, but no provincial approval requirement unless there is also a loan bylaw.

At the same time, there is a call for review of the AAP process: is the approbation by electors fair when the renters can out-vote the owners and businesses that pay the taxes? Also, is 10% reasonable in a community where the population is less than 500 or so? Also, are the thresholds for requisitions in section 345 outdated?

Division 3 – Establishing Bylaws for Services

Establishing bylaws required for most services

338. The list of services that require establishing bylaws has grown over the years. Many items listed in section 338 make practical sense, but consultation on this would be fruitful. Maybe the list of exceptions is what needs to be reviewed.

Required content for establishing bylaws

339. The content is the same as fort local area services, except for the idea of costs to be recovered by general property tax. What is interesting currently is the review of the list of exempted matters in section 339(2).

Special options for establishing bylaws

340. This list is reasonable and gives the regional board options. Particularly useful are the option for including an alternative review process, establishing terms for withdrawal, and creating an acceptable voting method.

Special rules in relation to continuation of older services

341. This may be unnecessary at his time.

Division 4 – Approval of Establishing Bylaws

Approval of establishing bylaws

342-348. Some have questioned the need for provincial approval in the absence of a loan bylaw, or for participating area approval if the taxpayers in the area have approved the bylaw by assent, AAP, or petition. Costs escalate, directors on the board change, and other concerns arise while the regional district staff are following through on all the approval steps.

Division 5 – Changes to Establishing Bylaws

Amendment or repeal of establishing bylaws

349-352. Again, the local area service approach could address this process.

Division 6 – Dispute Resolution in Relation to Services

Definitions in relation to this Division

353-372. If these provisions are built into establishing bylaws, with full support of the participants, then this Division 6 of Part 10 of the LGA may be unnecessary.

PART 11 – Regional Districts: Financial Management

Division 1 – Financial Planning and Accountability

373-412. The Municipal Finance Authority of British Columbia (MFA) has the highest bond rating in Canada. This bond rating is higher than that of the Province or BC Hydro. It is also higher than those of Quebec, Saskatchewan, or Alberta. Local governments borrowing through MFA enjoy remarkable long-term interest rates. There is universal support for the proposition that it would be unwise to alter the "*joint and several"* regional district debt protection regime that was developed after many cities went bankrupt in Great Depression.

Section 24 of the MFA Act says a regional board must not adopt a loan authorization bylaw (LAB) or security issuing bylaw on its own or on a member's behalf unless financing is undertaken by the MFA. Shorter-term capital borrowing can proceed without MFA per sections 181 and 182(1) of the *Community Charter*. A municipality must not borrow money under a LAB unless the financing undertaken by the regional district through the MFA, and the board consents to undertake the financing.

The advantage of long-term borrowing under a LAB: liability incurred is debenture debt. Therefore, the regional district security issuing bylaw provides regional joint and several security as protection from default, reducing risks of debentures. This is reinforced by section 412 LGA.

Given the bond rating and the absence of major complaints about Part 11, in this document I will only comment on a few minor issues that may be worthwhile to review.

The areas that are ripe for review:

1. Municipalities can use fees to regulate behaviour, under section 194(1)(c) CC and the Supreme Court of Canada decision in relation to the carbon pricing reference (at which Victoria, Squamish, Richmond, Vancouver, Nelson, and Rossland intervened in favour of the carbon pricing model). Considering challenges in the coming decades, regional districts should have the same authority to impose fees. Also, uniquely, fees as a tax

(collected in the same way as existing user fees) for services like sewer, water, sewage treatment could encourage things like water conservation.

2. UBCM has been working with impacted interests on alternative and additional revenue sources for rural areas, based on precedents in other jurisdictions. Revenue sources in other jurisdictions include rural hotel room revenue tax (not only for resort areas), fuel tax, resort tax like Whistler, portions of income tax or sales tax, or business tax, all with board discretion to impose or not in relations to services where taxpayers buy-in, unless a non-service model is employed.
3. The Province needs to deal with financial contributions from crown corporations in a balanced and equitable manner. Current grants in lieu of taxes do not satisfy the requirements for "reasonableness", fairness, or integrity.
4. The Fair Share program in the Peace Country and the Columbia Basin Trust are precedents for revenue sharing to balance impacts of resource industries on communities. The regional districts in the rest of the province can provide structure for expanding these programs.

PART 12 – Regional Districts: Bylaw Enforcement and Challenge of Bylaws

413-425. The provisions are virtually the same as for municipalities under the *Community Charter.*

However, under section 274 CC a municipality may, by a proceeding brought in Supreme Court, enforce, or prevent or restrain the contravention of a bylaw or resolution of the council under the CC or any other Act, or a provision of the CC or LGA or a regulation under those Acts. This does not require the municipality to establish a case on balance of convenience or irreparable harm – the municipality need only prove that a bylaw provision was breached. This would be a valuable enforcement tool for regional districts.