

## MUNICIPAL LAW - LAW 343-A03

### COURSE INFORMATION

<b>Prerequisites</b>	<b>None</b>
<b>Unit Value</b>	<b>1.5 units</b>
<b>Term Offered</b>	<b>Fall 2010</b>
<b>Classes</b>	<b>Monday and Wednesday 9:00 am to 10:30 am Rm. 152</b>
<b>Instructor</b>	<b>Deborah Curran</b> <b>Telephone: 250.853.3105</b> <b>Email: dlc@uvic.ca</b> <b>Office Hours: By appointment, Office 286 Library</b>

### MAJOR EDUCATIONAL GOALS/COURSE OBJECTIVES

Local governments, primarily municipalities and regional districts, oversee broad authority to regulate a wide range of activities in communities. They also operate many services and own substantial assets. Local government is arguably the most visible form of government as they regulate the physical development of cities and towns through land use controls, and take care of day-to-day services such as water, liquid and solid waste, and parks. Municipal law reviews the parameters of the legislative, administrative and quasi-judicial powers of local governments. It also explores how local governments respond to and shape the public interest.

The purpose of this course is to provide students with an introduction to some of the principles of municipal law in Canada, with a particular focus on the legislative regime in B.C. The central focus of the course will be on the diverse powers of municipal governments, and how the courts review and define municipal action. Using case studies, consideration will also be given to the structural problems in the operation of local governments. Roughly half of the course is devoted to land use planning and related issues.

### SUBJECT MATTER TO BE COVERED

- (1) The nature of local government and judicial control
- (2) Statutory basis and governance (conflict of interest)
- (3) Business regulation and licensing
- (4) Raising revenue (property taxation)
- (5) Tort and limitations
- (6) Growth management and land use planning
- (7) Zoning and site-specific land use control, including environmental protection
- (8) Agricultural land

### REQUIRED MATERIALS

All case law and articles are available in the pdf document of materials on the course web site. Legislation can be accessed through BC Laws [www.bclaws.bc.ca](http://www.bclaws.bc.ca). Students should familiarize themselves with using this web site as the course relies extensively on the *Community Charter* and *Local Government Act*. It is imperative that students have the legislative sections available to refer to in class (either in paper or electronic form).

## RESOURCES

Legislation (see BC Laws [www.bclaws.ca](http://www.bclaws.ca) for current version):

Community Charter  
Local Government Act  
Judicial Review Procedure Act  
Land Title Act

Local Government Information:

Canadian Institute of Planners - <http://www.cip-icu.ca/English/home.htm>  
CivicInfo BC – [www.civicinfo.bc.ca/](http://www.civicinfo.bc.ca/)  
Federation of Canadian Municipalities – [www.fcm.ca](http://www.fcm.ca)  
Links to all Local Governments in B.C. -  
<http://www.civicnet.bc.ca/siteengine/ActivePage.asp?PageID=88>  
Ministry of Community Services, Local Government Department –  
<http://www.cserv.gov.bc.ca/lgd/>  
Regulatory Best Practices Guide -  
[http://www.cserv.gov.bc.ca/lgd/gov\\_structure/library/regulatory\\_best\\_practices\\_guide.pdf](http://www.cserv.gov.bc.ca/lgd/gov_structure/library/regulatory_best_practices_guide.pdf)  
Union of B.C. Municipalities – [www.civicnet.bc.ca](http://www.civicnet.bc.ca)

Texts:

Rogers, The Law of Canadian Municipal Corporations (on reserve)  
Buholzer, British Columbia Planning Law and Practice (on reserve)  
Buholzer, The Community Charter: B.C. Local Government in Transition (on reserve)  
Annotated BC Local Government Act (Courthouse Library)

## METHODOLOGY

Lectures, classroom discussion, short presentations and a field trip. It is expected that students will have read assigned materials prior to class and will be prepared to discuss them. In addition to the cases, articles and legislation set out in the syllabus, a lecture outline and overview of each topic are posted on the course Moodle site for most weeks.

## EVALUATION

- |    |                                     |                       |
|----|-------------------------------------|-----------------------|
| 1. | Paper                               | 45%                   |
| 2. | Short presentation (on paper topic) | 5%                    |
| 3. | Open book final examination         | 50% (December 6 2010) |
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1. Research Paper (45%)  
Students must write a research paper on a local government issue related to the topics covered in the first half of the course (regulation, servicing, tort, governance, taxation). The paper may not be on the area of land use planning and regulation covered in the second half of the course. The issue may be generic (such as the involvement of local governments in property taxation, the jurisdictional issues involved in regulating businesses, or exercise of discretion in licencing), or specific to one local government (such as the limitations of Victoria's ability to raise funds to replace the Johnson Street/Blue Bridge or Langford's use of civil law to recoup money spent on removing protestors from development sites). This requirement may be met by attending a municipal council meeting and writing a report on an issue addressed at the meeting, or exploring a new case and what it means for that particular issue/area of law. See the paper topic ideas

document on the course Moodle site, and I am happy to help you craft a manageable research topic.

All papers will state a thesis issue or question and will answer that question. A strong paper will be original, analytical and incisive. It will demonstrate a firm grasp of the relevant doctrines and principles and apply them to the thesis question. A strong paper will come to a well-reasoned conclusion based on the sources cited. It will use statutes, case-law and other materials such as commentary/opinion as persuasive authorities for the points raised, to analogize where appropriate, and to strengthen and further the arguments made. A strong paper will recognize the complexity of the issue at hand, while clearly answering the questions. A strong paper will have few, if any, errors in grammar or punctuation. The writing style will be individualized and interesting. Technical terminology will be used appropriately and not in an overbearing way. In format, including citations, the paper will be virtually flawless. In contrast, a weak paper will review an area of law and offer few or no insights or analysis.

Please note that this is a research paper – do not rely solely on case law introduced in the course or on media reports accessed on the internet. I suggest that the Research Paper be around 3500 words (excluding footnotes) in length, and double spaced. I will not read more than 12 pages double spaced Times New Roman 12 point font in Word format. Please note below that students will submit papers electronically and I will ensure the font size is 12 point before grading each paper. Extensions may be granted in advance of the due date for reasonable grounds. Papers submitted after the deadline without prior approval will be penalized at a rate of 1 letter grade per day (the paper is marked out of 45). Up to two students may fulfill their major paper requirement in this course. Finally, I am willing to provide general comments on draft papers if submitted to me electronically at [dlc@uvic.ca](mailto:dlc@uvic.ca) by October 20 2010. Please note that if you take advantage of this opportunity it is likely that anonymity in the grading process for your research paper will not be maintained.

Using your mid-term code name only, research papers are due on Thursday October 28 2010 by email to [lawaoa@uvic.ca](mailto:lawaoa@uvic.ca). Vitaly Kazakov, Assistant to the Manager, Academic Administration and Student Services (Yvonne Lawson) will confirm receipt of your paper with you on Friday October 29.

2. Short presentation (5%)  
Each student will make a maximum seven minute presentation to the class on their paper topic or a portion of their paper topic. Time limits will be strictly enforced. The presentation will clearly and succinctly set out the jurisdiction (from where do municipalities obtain their jurisdiction to deal with the subject topic), issue addressed, and student insights. The purpose is to practice public speaking skills and to foster co-learning in the course whereby students can learn from each other's research. The presentations introduce the class to a wide range of topics involving municipal government that cannot be covered in the class materials. Students will summarize their paper or part of their paper in one page and email it to me for posting on the Moodle site three days in advance of their presentation. No electronic support for the presentations (i.e. Powerpoint or Prezzie) are permitted. Up to two students will present at the beginning of each class starting in October. There will be one exam question related to the student presentations.
3. Open book final examination (50%)  
The final examination is scheduled for Monday December 6 2010 in Room 152 and will be two (2) hours in length. The exam will cover only the materials in the last half of the course (October 25/topic of growth management to the end), and information covered in student presentations.

The Faculty's grading system will be used to translate numerical grades to letter grades. The relevant equivalencies between numerical and letter grades are as follows:

Letter Grade	Grade Point Value	Percentage Value	Narrative Description
A+ A A-	9 8 7	90-100% 85-89% 80-84%	Exceptional, outstanding, and excellent performance, normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
B+ B B-	6 5 4	75-79% 70-74% 65-69%	Very good, good, and solid performance, normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
C+ C	3 2	60-64% 55-59%	Satisfactory or minimally satisfactory performance. These grades indicate a satisfactory performance and knowledge of subject matter.
D	1	50-54%	Marginal performance. A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49 or below	Unsatisfactory performance.

## OTHER IMPORTANT NOTES

**Regulations:** Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2010-2011 ("U Vic Calendar"), both generally and specifically for the Faculty of Law. The Undergraduate Academic Regulations of the UVic Calendar set out the University's expectations about attendance and assignments (<http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/index.html>).

**Classroom Climate:** An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I as instructor and you as students must endeavour to be respectful in our language, our examples, and the manner in which we conduct our discussions. We have both an ethical and legal obligation to support this kind of environment (see the University's Discrimination and Harassment Policy ([http://www.uvic.ca/shared/shared\\_usecc/docs/policies/GV0205\\_1150\\_.pdf](http://www.uvic.ca/shared/shared_usecc/docs/policies/GV0205_1150_.pdf)), and the Faculty is committed to promoting, providing and protecting a positive, supportive and safe learning and working environment for all its members. If you have any concerns about the climate of the class, please contact me.

**Academic Integrity:** As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. Please consult the University Calendar for policies respecting paraphrasing, plagiarism, and cheating. If you have any concerns or questions, or require clarification, do not hesitate to drop by my office or to send me an e-mail. The policy on academic integrity can be found on the web at the following address: <http://web.uvic.ca/calendar2010/FACS/UnIn/UARe/PoAcI.html>.

**Students with a Disability:** If you have any type of disability, there are support systems, resources, and accommodation actions available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca/about.html>) and I would be more than happy to work with you to ensure your success in this course.

**Accommodation of Religious Observances:** The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday. If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday please speak with me so that we can work out a satisfactory arrangement.

## COURSE OUTLINE

<p>Week of - September 13</p>	<p><b>PART I: NATURE OF LOCAL GOVERNMENT</b></p> <p><b>1. What is Local Government?</b> Ron Levi &amp; Mariana Valverde. Freedom of the City: Canadian Cities and the Quest for Governmental Status 44 <i>Osgoode Hall Law Journal</i> 409 (2006)</p> <p><b>2. Constitutional Basis</b></p> <p>2.1 Constitutional Position &amp; Application of the Charter of Rights <i>Comox Strathcona (Regional District) v. Hansen</i></p> <p>2.2 Legislative Basis <i>Greenbaum v. Toronto</i></p> <p><b>3. Relationships with First Nations</b></p> <p>3.1 Providing Services <i>Burns Lake Indian Band v. Burns Lake (Village)</i></p> <p>3.2 Application of Bylaws <i>Rempel Bros. Concrete v. Chilliwack (City)</i></p> <p>3.3 Treaty Settlement &amp; Community Relations</p> <p><b>4. Structure of Local Government in B.C.</b></p>	<p><b>Legislation:</b> Community Charter (CC) Local Government Act (LGA)</p> <p>CC ss. 1-12 276-279</p> <p>CC s. 8(3)(a), 13, 13.1, 18</p>
<p>September 20</p>	<p><b>5. Provincial Legislative Structure - <i>Community Charter &amp; Local Government Act</i></b></p> <p>5.1 Broad Powers and Corporate Authority William Buholzer (2006). "Broad Municipal Powers" Under B.C.'s Community Charter (Vancouver: Continuing Legal Education Society of BC)</p> <p>5.2 Regulate, Prohibit, Provide Services, Tax, Self-Govern</p> <p>Case Studies: Dangerous Dogs <i>Capital (Regional District) v. Kuo</i></p> <p>Buildings &amp; Nuisance <i>Sahota v. Vancouver (City)</i> <i>Prince George v. Reimer</i></p> <p>Growing/Manufacturing Illegal/Dangerous Substances <i>Arkininstall v. Surrey (City)</i> <i>Rastad Construction Ltd. v. Port Moody (City)</i></p>	<p>CC ss. 8-9 (recap)</p> <p>ss. 8(3)(k), 47-49</p> <p>ss. 8(3)(l), 9, 16-17, 53-56, 63-64</p>

September 27	<p><b>6. Judicial and Legislative View of Local Government</b></p> <p>6.1 Judicial deference to local government &amp; approach to statutory interpretation  <i>Shell Canada Products Ltd. v. Vancouver (City)</i>  (in note for this week)  <i>Rascal Trucking v. Nanaimo (City)</i>  <i>Halifax v. Ed DeWolfe Trucking Ltd</i>  <i>Cenam Construction v. Cowichan Valley (Regional District)</i></p> <p><b>7. Judicial Control of Local Government (how to challenge a municipal decision)</b></p> <p>7.1 Substantive grounds  <i>Spray Tech v. Hudson (Town)</i>  <i>Dhillon v. Richmond</i>  <i>Save Richmond Farmland</i></p> <p>7.2 Procedural Fairness  <i>Cameron v. Sechelt (District)</i></p> <p>7.3 Standard of Review</p>	LGA ss.260-265 <i>Judicial Review Procedure Act</i>
Sometime in October	Thursday October 14 or 28 – field trip to City of Victoria Council Meeting 7:10 p.m. #1 Centennial Square (enter from Pandora Street between Douglas & Government Streets)	
October 4	<p><b>8. Governance</b></p> <p>8.1 Disqualification and Conflict of Interest  <i>Re Hoepfner</i>  <i>King v. Nanaimo</i>  <i>Fairbrass v. Hansma</i></p> <p>8.2 Municipal Procedure &amp; Operations</p> <ul style="list-style-type: none"> <li>• Exercise of Authority by Bylaw and Resolution</li> <li>• Procedure Rules</li> <li>• Council</li> <li>• Delegation</li> <li>• Bylaw Enforcement</li> <li>• Revenue</li> <li>• Providing Services  <i>Skinnydipper Services v. Burnaby</i></li> </ul> <p>8.3 Public Oversight  <i>Botterill v. Cranbrook</i>  Assent of Electors – Johnson Street/Blue Bridge</p>	<p>CC ss.81, 100-113  LGA ss. 66, 67(1-2), 68, 86-88, 143</p> <p>CC ss.6,8  122,135-140  89-93, 123-124  114-118  154-156  260-264  192-194, 197</p> <p>CC. ss.84-86, 94-99</p>

<p>October 11</p> <p>(Thanksgiving - no class October 11)</p> <p>Guest Lecture: Tom Zworski, City Solicitor City of Victoria</p>	<p><b>9. Business Regulation &amp; Licencing</b></p> <p>9.1 <i>Constitution Act</i> s.92(9)</p> <p>9.2 Definition of Business &amp; Authority to Regulate</p> <p>9.3 Discretion <i>Sunshine Valley Co-op Assoc. v. Grand Forks Vancouver (City Licence Bylaw 4957, Re Royal City Jewellers v. New Westminster (City) Heller v. Vancouver (City) Re Conmac Stages and Town of Sidney Prince George (City) v. Payne Brownrigg v. North Cowichan (District) 377050 BC Ltd dba the Inter-City Motel v. Burnaby (City) Dragonwood Enterprises v. Surrey (City)</i></p>	<p>CC ss.8(6)&amp;(9), 12,14,15, 59-61</p>
<p>October 18</p>	<p><b>10. Taxation</b></p> <p><i>Catalyst Paper Corp. v. North Cowichan (District)</i></p> <p><b>11. Tort</b></p> <p>11.1 Immunities, Limitations &amp; Liabilities</p> <p>11.2 Negligence Daniel Bennett &amp; Holman Wang (2006). Negligence and Nuisance: Liability and Limitations (Vancouver: Continuing Legal Education Society of B.C.) <i>Sullivan v. Victoria</i> <i>Parsons v. Finch</i> (Trial) <i>Parsons v. Finch</i> (Court of Appeal) <i>Lovely v. Kamloops (City)</i></p> <p>11.3 Abuse of Public Office Timothy Leadem (2002). Tort of Abuse of Public Office (Vancouver: Continuing Legal Education Society of B.C.)</p>	<p>CC ss. 197, 199</p> <p>LGA ss.285-286, 288-291</p>
<p>October 25</p> <p><b>Research Paper Due Thursday October 28 via email to <a href="mailto:lawaoa@uvic.ca">lawaoa@uvic.ca</a></b></p>	<p><b>PART II: LAND USE CONTROLS</b></p> <p><b>1. Growth Management</b></p> <p>1.1 Layers of Growth Management/Land Use Control <a href="#">Capital Regional District Regional Growth Strategy</a> (for your interest)</p> <p>1.2 “Takings” (regulatory/de facto/effective expropriation) <i>Mariner Real Estate v. Nova Scotia</i> <i>535534 British Columbia Ltd. v. White Rock (City)</i></p>	<p>LGA ss.849-850 863-866</p> <p>LGA s.914</p>

	<p>1.3 Sustainability Deborah Curran (2008). Local Government Sustainability Trends (Vancouver: Continuing Legal Education Society of B.C.)</p> <p>Case Study: Capital Regional District &amp; Highlands (District)</p>	
November 1	<p><b>2. Planning</b></p> <p>2.1 Official Community Plan</p> <p>2.2 Consistency Requirements <i>Heritage Preservation Society of New Westminster v. City of New Westminster</i> <i>Striegel v. Tofino</i></p> <p>2.3 Public Hearings <i>Brooks v. Courtenay</i> <i>Cameron v. Sechelt (District) reprise</i></p>	<p>LGA ss.875-879, 884 890-896</p>
November 8	<p><b>3. Zoning</b></p> <p>3.1 Zoning – Overview &amp; Jurisdiction</p> <p>3.2 Interpretation of Zoning Bylaw Provisions <i>Burton v. Harris</i> <i>Abbotsford v. Marshall Pacific Development Corp.</i></p> <p>3.3 Legitimate/Illegitimate Distinctions in Zoning <i>Common Exchange v. Langley</i> <i>Central Saanich v. Amaryllis Enterprises</i> <i>Hauff v. Vancouver</i> <i>Yuen v. Oak Bay</i> <i>Petro-Can v. North Vancouver (District)</i> <i>Greater Victoria School District No. 61 v. Oak Bay</i></p> <p>3.4 “People zoning” <i>R. v. Bell</i> <i>Whistler v. Wright</i></p> <p>3.5 Non-conforming Uses <i>Cowichan Valley Regional District v. Ward</i></p>	<p>LGA ss.903-904</p> <p>CC s.911</p>
November 15	<p><b>4. Subdivision of Land</b></p> <p>4.1 Development requirements</p> <p>4.2 Approving Officer &amp; the Public Interest <i>Vancouver v. Simpson</i> <i>Hlynsky v West Van</i></p>	<p>LGA ss.938, 941(1)&amp;(4), 943 Land Title Act ss. 77, 83, 85-87, 91</p>

	<p><i>Edwards v. Spallumcheen</i>  <i>Morgan v. Vancouver</i>  <i>Cole v. Campbell River Approving Officer</i>  <i>Cole v. Campbell River Approving Officer</i>  <i>Island View Beach Estates v. Central Saanich</i></p> <p>4.3 Development Cost Charges</p>	<p>CC. s.933(1-2),  933.1</p>
November 22	<p><b>5. Site-specific Development Controls</b></p> <p>5.1 Overview</p> <p>5.2 Development Permits  Kathleen Higgins &amp; Olga Rivkin (2007).  Development Permits and Development Variance Permits (Vancouver: Continuing Legal Education Society of B.C.)  <i>Bignell Enterprises v. Campbell River</i>  <i>Westfair Foods v. Saanich</i>  <i>511784 B.C. Ltd. et al v. Salmon Arm (District)</i></p> <p>5.3 Variances</p> <p>5.4 Interaction Between Bylaws and Permits  <i>Costello v. Hornby Island Local Trust Committee</i></p> <p>Case Study: City of Colwood, Aquattro project</p>	<p>CC s.25  LGA ss. 919.1-920.1</p> <p>LGA s.901</p>
November 29	<p><b>6. Agricultural land</b></p> <p><i>Farm Practices Protection (Right to Farm) Act</i> ss.2-3  <i>Davison v. Maple Ridge</i>  <i>Central Saanich v. Jopp Ventures Corp.</i></p> <p>Review practice exam question</p>	<p>LGA ss.903(5-7),  917-918, 920(10)  Land Title Act  ss.86(1)(c)(x)</p>