
SUBJECT TO SOLICITOR/CLIENT PRIVILEGE

September 22, 2009

TO: Mayor and Council

COPIES TO: Dr. Penny Ballem, City Manager

AND TO: City Clerk

FROM: Frances J. Connell, Director of Legal Services

SUBJECT: Park Board Matters

I have been asked to provide a brief overview of the relationship between the Park Board and the City, with particular reference to the responsibility of the Park Board to the City in matters of administration, such as employment matters. It is hoped that this overview will assist City Council and the Park Board in their consideration of recent issues raised.

In the last several days there have been reports in the media which suggest that the Park Board operates entirely independently of the City of Vancouver on all matters, including employment-related matters. These reports have suggested, for example, that City Council has no role in the selection of a General Manager of the Park Board. Such suggestions are incorrect, and unsupported by the provisions of the *Vancouver Charter*.

In 2004, a detailed legal opinion was obtained from outside counsel on the relationship between the City and the Park Board. One of the conclusions of that opinion was that, while the Park Board has exclusive jurisdiction within its area of responsibility (set out in Section 488 ff of the *Vancouver Charter*), there are certain areas of an "administrative nature", such as employment matters, where ultimate authority rests with City Council. That authority would extend to the ability of City Council to hire a General Manager of the Park Board. Our outside counsel has confirmed that the opinion provided in 2004 remains his opinion today.

The following information is supported by the opinion of outside counsel.

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The *Vancouver Charter* establishes the Park Board and gives to it exclusive possession of, and exclusive jurisdiction and control of, the City's parks. Powers given to the Park Board include:

- Section 488 provides that the Park Board has exclusive possession of, and exclusive jurisdiction and control of all areas designated as permanent or temporary public parks of the City, and that the Park Board has custody, care and management (to the extent prescribed by Council) of such other areas belonging to or held by the City as Council may determine.
- Section 489 sets out the powers of the Park Board with respect to various matters, including construction, operation and maintenance of buildings, accommodation for sports and games, charging and collecting fees for admission to buildings or other places, closure of parks from time to time, acquisition of furniture and equipment, establishing, maintaining and operating stands for the sale of commodities, and organizing and conducting recreational programs.
- Section 489(1) provides that the Park Board may do such other things with respect to any parks as the Council shall from time to time authorize.
- Section 491 gives the Park Board power to pass, amend and repeal by-laws (not inconsistent with any by-law passed by Council) to be observed in the parks for the control, regulation, protection, and government of the parks and of persons therein.

The Park Board defers to Council in respect of certain important aspects of its governance and the conduct of its operations. For example, the *Vancouver Charter* expressly provides that:

- Council sets the terms of, and remuneration payable to, Park Board members (Sections 486(2) and 489B);
- Council may add to the powers given to the Park Board by the *Vancouver Charter* (Section 489(1)(p));
- Council may designate areas (other than permanent or temporary park areas) over which the Park Board shall have custody, care and management (Section 488(3));
- Board Park by-laws must not be inconsistent with any Council by-law (Section 491);
- the Board Park must, on an annual basis, submit to Council estimates of its anticipated receipts and expenditures for the next ensuing year, and cannot authorize any expenditures other than those so estimated (Sections 492 and 493) .

The above provisions, in addition to a number of other specific *Vancouver Charter* sections, noted below, provide to Council ultimate responsibility, not just for the amount of funding Council deems appropriate for the Park Board operations, but for the administrative

“umbrella” of the Park Board, including labour and employment issues affecting the Park Board. Among the provisions related to employment matters are the following:

- Section 162, which provides that Council may provide for the appointment, suspension and removal of such employees as may be considered necessary, and may fix their remuneration and hours of work;
- Section 165(e), which provides that Council may delegate to a head of a department such powers of employing, suspending, or dismissing an employee in that department as the Council sees fit;
- Section 175(2), which provides that the Council may, in making a collective agreement with employees of the City, and who are represented by a labour organization as bargaining agent, insert in such agreement a provision requiring, as a condition of continued employment, membership in such labour organization, or a preference of employment to members of such labour organization;
- Section 180, which provides that Council may provide for indemnification of officers or employees of the City or members of the Council or any public service organization (including the Park Board); and
- Sections 208(c) and (d), which state that the Mayor shall oversee and inspect the conduct of all employees of the City under the jurisdiction of the Council and shall suspend from employment, if the Mayor thinks it necessary, any employee responsible for negligence or misconduct.

In all these respects, the Park Board (through its General Manager) is answerable to Council. Traditionally, the Park Board (through its General Manager) has provided to Council such reports and other information, and taken such direction in areas of administration, as Council has requested, in order to discharge its own statutory responsibilities. While the General Manager of the Park Board assists the elected Park Board in those areas over which the Board has been given statutory power, that is not the sum total of the General Manager’s responsibility.

It is important to observe that City Council has delegated to the City Manager (pursuant to Section 162A of the *Vancouver Charter*) a broad scope of powers to supervise and direct the affairs of the City and the City’s employees, in accordance with policies of Council. Such delegated powers include the authority of the City Manager to address matters referenced above touching the administrative structure of the Park Board, and the employees of the Park Board.

This memorandum is provided as a brief overview only and is consistent with external advice we have received in respect of the issues addressed herein. We hope that it is of assistance, and would be pleased to provide further information if needed.

Frances J. Connell
Director of Legal Services