



Making a difference...together

**MINUTES OF THE MEETING OF THE CAPITAL REGIONAL DISTRICT BOARD,
Sitting as COMMITTEE OF THE WHOLE
held Wednesday, June 29, 2011, in the Board Room, 625 Fisgard Street, Victoria, BC**

PRESENT: Directors: G. Young (Chair), S. Brice, J. Brownoff (12:27), V. Derman, B. Desjardins, J. Evans, A. Finall, D. Fortin, P. Gerrard (for F. Leonard), K. Hancock, G. Hendren, M. Hicks, G. Hill, M. Loveless (for L. Cross), P. Lucas, J. Ranns, D. Saunders, L. Seaton (for D. Blackwell), C. Thornton-Joe and L. Wergeland. **Staff:** K. Daniels, J. Hull, B. Lapham, D. Lokken, A. Orr, L. Rushton, and S. Norton (Recorder). **Also present:** M. Rankin, QC, Heenan Blaikie, Board Solicitor.

REGRETS: Directors: C. Causton, J. Mar and J. Mendum.

The Chair called the meeting to order at 12:05 p.m.

1 APPROVAL OF THE AGENDA

MOVED by Director Desjardins, **SECONDED** by Director Lucas,
That the agenda be approved as circulated.

CARRIED

2 ADOPTION OF MINUTES

MOVED by Director Evans, **SECONDED** by Director Brice,
That the minutes of the meetings of November 17 and December 1, 2010 be adopted.

CARRIED

3 PRESENTATION – ABORIGINAL LAW & THE CAPITAL REGIONAL DISTRICT

Chair Young advised that the intention of the presentation was for general information, and that if questions were raised on specific issues or treaty negotiations, the Committee may have to move *in camera*.

Mr. Daniels noted that the CRD has regular interface with First Nations on a variety of issues and services, and as the understanding of local government's legal status to consult is very broad, it was felt that this presentation would be valuable to all Directors.

Mr. Rankin outlined his experience with aboriginal law and proceeded with his presentation under the following headings:

- Background – First Nations History, Treaties in BC, Constitution Act, 1982, S.35, BC's New Relationship, Aboriginal Rights, Treaty Rights, Asserted Rights, Treaty Rights Revisited
- Aboriginal Title
- Duty of Consultation – When does Duty Arise? Who is to be Consulted? Scope of the Duty, "the Honour of the Crown"
- Status of Local Government/CRD – local government is not "the Crown"
- Accommodation
- Risks and Risk Management

- Negotiations with First Nations

Director Brownoff entered the meeting at 12:27 p.m.

Concern was raised regarding an exchange of letters between the solicitors of the Pacheedaht First Nation and the CRD, and the possible impact this could have on relationships with First Nations and treaty negotiations. Mr. Daniels explained the practice for solicitor to solicitor communication, the awareness and consideration of treaty issues and negotiations, and the difference between the duty to engage and the duty to consult. Since the exchange of letters, the Board Chair, Director Hicks and Mr. Daniels, along with legal representation, met with Pacheedaht First Nation.

MOVED by Director Finall, **SECONDED** by Director Brownoff,

That the Committee close the meeting and move *in camera* in accordance with the Community Charter, Part 4, Division 3, 90(i) *the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.*

CARRIED
Saunders OPPOSED

Committee of the Whole moved in camera at 12:35 and rose without report at 1:03 p.m.

During the discussion, the need to have CRD representation at the Treaty Advisory Committee was noted, as well as the need to develop respectful relationships with treaty and non-treaty First Nations regardless of any constitutional duty.

In response to questions, Mr. Rankin provided further information regarding:

- court cases related to the concept of scope of duty and the ‘honour of the Crown’ – not just a procedural obligation but genuine willingness to change your position in light of what you have heard; courts may be flexible about process but not on the law
- BC’s New Relationship – policy announcement by provincial government to kick start the new relationship by providing funding for the treaty summit and for capacity building for those involved in forestry, mining and energy projects in First Nations territory
- consultation gridlock – not just for treaties but also for energy, mining, and forestry projects; started in good faith but has resulted in litigation.

Directors Gerrard and Hill left the meeting at 1:15 p.m.

4 DISCUSSION – REGIONAL PRIORITY PROJECTS (Director Fortin)

Director Fortin introduced the issue. He commented that he and some of the other Mayors are concerned that that this region may not be getting its fair share of infrastructure funding from the federal and provincial governments, for such things as affordable housing and transportation, because it is perceived as fractured. To overcome this, he proposed that staff be asked to bring forward options for a process to develop five to seven priorities for the region as a whole. The priorities could be broader than the usual local government (municipal and regional) capital projects and gas tax funding projects in order to include

broader community priorities. An example was the airport runway extension.

There was consensus for staff to prepare a report on options for a process to develop priorities for the region.

5 ADJOURNMENT

MOVED by Director Wergeland, **SECONDED** by Director Finall,
That the meeting be adjourned at 1:25 p.m.

CARRIED

CERTIFIED CORRECT:

CHAIR

CORPORATE OFFICER