



Council Hearings and the Decision making Process

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When it comes to deciding matters that affect owners and tenants, sometimes councils have obligations beyond holding a hearing and making a decision.

By hearing owners and tenants and making decisions, council members are acting in a quasi-judicial manner. That means that council members are required to act like a panel of judges in some ways. For instance, council members hearing a case need to be fair, unbiased and ready to listen.

Owners or tenants who are dissatisfied with a council decision can often challenge that decision in one of several different venues. For instance, a resident who has a physical disability exacerbated by second hand smoke and feels that council has not properly enforced the strata corporation's nuisance bylaw against the smoker may take his or her complaint to the Human Rights Tribunal, the Civil Resolutions Tribunal or the Supreme Court of British Columbia. When making a decision, council does not always know what venue that decision will be challenged in, and what legal tests will be applied to their decision.

The obligations of councils to enter into a decision-making process that involves more than hearing a resident and making a decision is most clearly illustrated in *Teodora Leary, v. Strata Plan VR 1001* September 21, 2016, a decision of the Human Rights Tribunal. If an owner has a physical or mental disability that requires accommodation, council has an obligation to take a lead role in investigating solutions, entering into a reasonable and respectful dialogue with the resident, assessing whether solutions are appropriate,

and implementing those solutions unless doing so causes undue hardship.

There is a tension between the requirements the *Strata Property Act* imposes on councils to hold hearings and make timely decisions and the other obligations on council to implement a more sophisticated decision making process imposed by the Human Rights Tribunal.

For cases that do not involve a human rights component, the council should still consider whether an proper decision making process includes negotiations, investigation and/or action on the part of council.

When can a council hold a hearing and make a decision and when does the council need to investigate, enter into a reasonable and respectful dialogue and/or implement solutions? This was the topic of my presentation during the CHOA Strata Symposium on May 10, 2017.