



Renovate the Public Hearing Project: Pre-Development Public Engagement & Legal Reforms to Support Housing Supply

Backgrounder

Introduction to the Renovate the Public Hearing Project

Date: 6 April 2023

BCLI is carrying out a project to examine the law of public hearings on local governments' land-use bylaws. The project is slated to run until March 2024. Its goal is to produce a final report that contains recommendations for legislative reform. BCLI has funding for this project from the Canada Mortgage and Housing Corporation.

Overview of the Project

What are public hearings?

Regulation of land use in British Columbia is a matter for local governments. But local governments must adhere to a legal framework established in provincial legislation.

One component of that legal framework is a requirement to hold a public hearing on a proposed land-use bylaw. Land-use bylaws vary in types. One type involves a long-term, large-scale statement of a community's planning vision. It's called an official community plan. A more common type is a zoning bylaw. Zoning bylaws deal with the details of the broad official community plan by regulating what kinds of structures get built where and for what uses.

A common scenario that triggers a public hearing is when a real-estate developer wants to build a building that isn't permitted under a zoning bylaw. For example, the developer may want to put up a multi-unit apartment in an area zoned for single-family housing. In order to proceed, the developer would need a rezoning from the local government.

British Columbia's *Local Government Act* explains the purpose of public hearings in a section establishing the requirement to hold one. It says that a local government mustn't adopt certain types of land-use bylaws "without holding a public hearing on the bylaw for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw."¹ Similar legislation applies to the City of Vancouver under the *Vancouver Charter*.²

Why are public hearings being examined?

Public hearings have been a part of BC's local-government law for nearly 100 years. For most of this time, they've been viewed largely in a favourable light. People commonly referred to public hearings as cornerstones of local democracy because they provided a forum for the public to participate in land-use decision-making.

But, more recently, public hearings have started to attract criticism. The rule-bound hearing format has started to frustrate local governments and public participants alike. The hearing has also been shown to be a means to public engagement that only engages a small segment of the public. And there have been questions raised about whether public hearings are contributing to better land-use decisions.

Goals of the Project

The overall goal of the project is to seek a better way to engage the public in land-use decision-making through law reform, public engagement, and considering alignment with Indigenous governance. Building on our previous study of the origins, development, and current state of the law on public hearings, BCLI will in this project publish a report that makes recommendations for specific reforms to the *Local Government Act* and related legislation.

In support of this overall goal, the project will pursue a series of subsidiary goals:

- carrying out legal research into the current state of the law on public hearings and law-reform proposals;
- raising awareness among professionals working in local-government law and among the general public about the current state of the law;
- considering input from BCLI's Reconciliation and Community Listening Exploration Series and SFU Wosk Centre's engagements with underserved groups;
- publishing the results of the project's legal research, creating a resource for legal researchers and other professionals interested in local-government law; and

1. RSBC 2015, c 1, s 464 (1).

2. See SBC 1953, c 55, s 566 (1).

- conducting a wide-ranging public consultation aimed at eliciting comment on specific law-reform proposals.

Renovate the Public Hearing Project Committee

BCLI is carrying out this project with the assistance of an expert project committee. The members of the committee are:

Bruce D. Woolley, KC—Chair
Lawyer

Nathalie J. Baker
Eyford Partners LLP

Alyssa D. Bradley
Young, Anderson

Michael Drummond
Urban Development Institute

Arielle Guetta
Ministry of Municipal Affairs for BC

Eric Nicholls
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Dr. Jennifer Wolowic
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Merle C. Alexander, KC
Miller Titerle + Company

Tyler Baker
BC Housing

Deborah Carlson
West Coast Environmental Law

Janae Enns
Lidstone & Company

Ashley Murphey
Peace River Regional District

Edward L. Wilson
Lawson Lundell LLP

Tomasz M. Zworski
City of Victoria

Reconciliation and Community Listening Exploration Series

An important component of the project will be to consider how reforms to the law on public hearings can be aligned with Indigenous governance. In 2019, BC passed the *Declaration on the Rights of Indigenous Peoples Act*, which requires that all crown legislation be aligned to be consistent with the UN Declaration on the Rights of Indigenous Peoples. BCLI's project will identify ways to integrate Indigenous considerations into law-reform approaches for public hearings so that any recommended legislative changes can function in a legally plural context. The project has been designed to support a Reconciliation and Community Listening Exploration Series, which will allow BCLI to engage with these issues directly and to provide input from that engagement to the project committee.

Project Partner

BCLI is carrying out this project in conjunction with the Simon Fraser University Wosk Centre for Dialogue.

Our Supporter

The project was made possible by funding from the Canada Mortgage and Housing Corporation, as part of its Housing Supply Challenge—Getting Started Round.

Legal Issues to Be Examined in this Project

The committee has developed a work plan for the project, which includes issues in the following areas of study:

- legislation enabling alternatives to public hearings;
- timing of public hearings in the bylaw-approval process;
- public-hearing procedures;
- when it is appropriate not to hold a public hearing.

Project Timeline

The project is planned to unfold in five phases. The focus of its first phase is on initial research and issue identification. The main goals of this phase is the formation of an expert project committee, to assist BCLI in making its recommendations for the project and to cultivated and confirmed relationships with Indigenous knowledge holders representing diverse perspectives for feedback on design of the Reconciliation and Community Listening Exploration Series. Once the project committee is formed, one of its first tasks will be the creation of a work plan that identifies the specific issues for reform to be tackled in this project.

After a work plan has been created, the project will shift into phase two. This phase will be taken up with regular project-committee meetings, to consider the issues for reform, the options that may address them, and the tentative recommendations that the committee wishes to make. During this phase the Reconciliation and Community Listening Exploration Series will begin its activities. This will be the longest phase of the project; it will likely cover much of 2023.

Phase three of the project will involve a public consultation. The centerpiece of this consultation will be a consultation paper, one of this project's major publications which will gather together research into the law and reform options, results from the Reconciliation and Community Listening Exploration Series and the committee's tentative recommendations for reform. Upon publication of the consultation paper, which is projected for fall of 2023, all members of the public will be able to comment on the committee's proposed reforms before the committee decides whether they should be made final recommendations.

When the public consultation is complete, the project will move into phase four. In this phase, the committee will consider the responses it receives in the public consultation and

will decide on its final recommendations. These final recommendations will be set out in another of project's major publications, its final report. This report is projected for publication in spring 2024.

Since BCLI is independent from government, it can't guarantee implementation of the report's recommendations. They will require government action to be implemented. The fifth phase of the project is designed to recognize this fact. In this phase, BCLI will offer to assist the government in any activities needed to implement the report's recommendations. BCLI may also take some time, at the end of the project, to evaluate lessons learned over the course of the project.

About the British Columbia Law Institute

The British Columbia Law Institute has been undertaking independent law reform projects in British Columbia to develop just and innovative solutions and increase access to justice since 1997. We work to promote the clarification and simplification of the law and its adaptation to modern social needs, promote improvement of the administration of justice and respect for the rule of law, and promote and carry out scholarly legal research.

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