

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Western Forest Products Inc. v. Capital
Regional District,***
2008 BCSC 1776

Date: 20081223
Docket: 08 2201
Registry: Victoria

Between:

Western Forest Products Inc.

Petitioner

And:

Capital Regional District

Respondent

Docket: 08 1644
Registry: Victoria

**In the Matter of the *Judicial Review Procedure Act* and Section 262 of the
Local Government Act and Re Capital Regional District Bylaws 3474, 3495,
3497, 3498, 3499 and 3500**

Between:

**Association of British Columbia Landowners
and Lester Roy Monnington**

Petitioners

And:

**Capital Regional District and
The Corporation of the District of Central Saanich**

Respondents

Before: The Honourable Mr. Justice Metzger

Reasons for Judgment

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L. J. Alexander

Date and Place of Trial/Hearing:

September 16–18, 2008
Victoria, B.C.

I. Introduction

[1] This is an application for judicial review of a series of bylaws adopted by the Capital Regional District (the “CRD”) on April 23, 2008.

[2] On January 31, 2007, and without prior notice to the CRD, the Minister of Forests and Range approved the removal of approximately 28,000 hectares of private land from three coastal tree farm licenses (“TFLs”) in the area known as the “Juan de Fuca Electoral Area” (the “Electoral Area”), located on the south coast of Vancouver Island.

[3] In response, the CRD passed Bylaws No. 3474, 3495, 3497, 3498, 3499 and 3500 to downzone large areas of land in the Electoral Area. The bylaws (the “bylaws”) consist specifically of three amendments to the “official community plans” (OCPs) that govern land use planning for the areas in question, two amendments to the Sooke Land Use Bylaw, 1992, and an amendment to the Sooke subdivision bylaw.

[4] One of the petitioners, Western Forest Products, Inc. (“WFP”), owns approximately 6,300 acres of land under 68 titles in the CRD, most of which is located in the Electoral Area and was among the lands removed from the TFLs by the Minister of Forests and Range.

[5] There is no dispute that the purpose of the bylaws was to block the development of certain lands that were removed from the TFLs and held by WFP until the CRD had sufficient time to undertake appropriate land use planning.

[6] WFP seeks an order setting aside the bylaws for illegality, pursuant to s. 262 of the **Local Government Act**, R.S.B.C 1996, c. 323 (the “**Act**”).

[7] In a separate petition, the Association of British Columbia Landowners and Lester Roy Monnington (the “Association”) also seek an order quashing these same bylaws.

[8] The Association is an incorporated society made up primarily of persons who reside in the Electoral Area and whose interests and concerns are the promotion and preservation of private property rights and advocating for responsible and reasonable land use regulation within the rural areas of the CRD.

[9] The parties agreed that these two petitions would be heard together given the commonality of their primary arguments and remedy sought, that is, the quashing of the six bylaws.

[10] The petitioners also seek a declaration from this Court that s. 11 of the **Capital Regional District Regulation** (the “**Regulation**”) governs which CRD directors must vote on land use planning decisions in the Electoral Area.

II. Background

[11] The CRD is the regional government for the 13 municipalities and three electoral areas located on the southern tip of Vancouver Island. The municipalities that are included in the CRD are the City of Victoria, District of Saanich, District of Oak Bay, Township of Esquimalt, Town of Sidney, Town of View Royal, City of Colwood, District of Central Saanich, District of North Saanich, District of Highlands,

City of Langford, District of Metchosin, and District of Sooke. The CRD's three unincorporated electoral areas are the Juan de Fuca Electoral Area, the Southern Gulf Islands Electoral Area, and the Salt Spring Island Electoral Area.

[12] A 23 member board of directors governs the CRD (the "Board"). The Board is made up of directors representing each CRD municipality and Electoral Area.

Residents in each Electoral Area directly elect their directors in the general local government election, held every three years. Each municipality gets one director for every 25,000 people in its population.

[13] Since the CRD was formed in 1966, the Electoral Area has remained primarily rural. It has a population of approximately 4,500 people in unincorporated settlement areas such as Port Renfrew, Jordan River, Shirley District, Otter Point and East Sooke. Historically, vast portions of the Electoral Area's 150,000 hectares have been forestry lands, with many of those lands located in areas subject to tree farm licenses. There has been little development within much of the Electoral Area and, consequently, a limited need for planning or regulation with respect to growth and land use.

[14] Part 24 of the **Act**, entitled "Regional Districts", sets out the basic legal framework within which regional districts operate. Regional districts provide regional governance and services to municipalities within their borders, and concern themselves with matters of shared interest. In unincorporated areas, such as those within the Electoral Area, it is the regional district that provides municipal services such as land use planning and building inspection.

[15] As the Electoral Area has a population of 4,500, a single elected director represents it on the Board.

[16] For the Electoral Area, land use planning recommendations, including those respecting the preparation and adoption of zoning bylaws and official community plans, are provided to the Board by the Juan de Fuca Land Use Committee.

[17] The Juan de Fuca Land Use Committee's legal status is not in dispute. In this case, the Committee acted as the CRD's delegate for purposes of directing staff activities, holding public hearings, and giving advice to the Board. Thus, throughout the process leading up to the approval of the impugned bylaws, the staff reported to the Committee, not the Board.

[18] The November 13, 2007 report to the Committee prepared by CRD staff identified the issue before the Committee in the following terms, under the heading "History/Background":

Recently, the issue of growth in the Juan de Fuca Electoral Area has been become [*sic*] a concern for many in the Electoral Area due to the decision of the Province to cancel long term tree farm licenses and to exclude lands from Private Managed Lands status. With the increased interest in the development potential of the Electoral Area staff has been directed to provide recommendations on how to address the issue in consideration of the Regional Growth Strategy, Official Community Plans and the existing Land Use and Subdivision Bylaws.

[19] The Committee recommended that the Board give the bylaws first and second reading and to refer them to a public hearing. The bylaws increased the minimum parcel size for subdivision purposes, which affected lands owned by WFP (and others) in the Electoral Area.

[20] Before the bylaws were adopted, lands within the “Forestry Zone,” which primarily consisted of forestry lands, such as those removed from the TFLs, could be subdivided into parcels of four hectares. The amending bylaws increased the minimum parcel size in the Forestry Zone to 120 hectares. The bylaws also divided lands previously zoned as “Rural” into two categories. The new “Rural B Zone”, which includes all rural parcels over eight hectares, is now zoned for a minimum parcel size of 120 hectares. For the remaining rural lands, being those parcels less than eight hectares that now fall within the “Rural A Zone”, the minimum parcel size is now four hectares.

[21] The impugned bylaws were given first and second reading on November 17, 2007. The minutes of the meeting record that the only directors entitled to vote on the bylaws were the director for the Juan de Fuca Electoral District, and the directors representing the municipalities of the District of Central Saanich (Central Saanich) and the District of Metchosin (Metchosin). 2005 BCSC 1786

III. Analysis

Did the CRD violate s. 791 of the *Act* by only permitting the Electoral Area director and the directors representing Central Saanich and Metchosin to vote on the impugned bylaws?

[22] Both petitioners argue that the CRD did not vote on the impugned bylaws in accordance with the voting requirements under s. 791 of the ***Act***. Both petitioners advanced several arguments respecting which sections of the ***Act*** or ***Regulation*** ought to have governed the vote.

[23] The majority of the arguments respecting the voting requirements under the **Act** are connected to a separate issue argued by both petitioners. That issue is the validity of two agreements to “share in some but not all of the costs of services”, purportedly created pursuant to s. 804.1 of the **Act**, one between the CRD and Central Saanich, and the other between the CRD and Metchosin. Both petitioners submit that these two agreements, dated April 12, 2006, are unlawful.

[24] The “cost sharing agreements” created under the **Act** determined how the Board decided which directors were “eligible” to vote on the impugned bylaws. As a result of the CRD’s interpretation of the voting requirements under s. 791, only the Juan de Fuca Electoral Area director and the directors from Central Saanich and Metchosin voted on the impugned bylaws at every stage.

[25] If the agreements are found to be invalid, then the CRD Board did not follow the correct voting procedure pursuant to the **Act** and, therefore, the impugned bylaws are necessarily illegal and should be set aside.

A. Standard of Review

[26] The standard of review of the CRD’s actions with respect to the issues before this Court is correctness. Local governments are creatures of statute that must operate within the statutory framework set up by the Legislature: ***Nanaimo (City) v. Rascal Trucking Ltd.***, 2000 SCC 13, [2000] 1 S.C.R. 342, at para. 27 [***Nanaimo***]. Local governments have no greater ability to interpret their empowering statutes than a court: ***Nanaimo***, at para. 29. As Mr. Justice Major concluded in ***Nanaimo***, “[t]he test on jurisdiction and questions of law is correctness”. The correct

interpretation of the provisions of the **Act** at issue here involves questions of law for which the CRD is entitled to no deference.

[27] This approach may be distinguished from that applicable to cases challenging the decision of a local government acting within its statutory authority. In those cases, the reviewing court will defer to the local government's decision on the basis that "[m]unicipal councilors are elected by the constituents they represent and as such are more conversant with the exigencies of their community than are the courts": *Nanaimo*, at para. 35. I am satisfied that principle does not apply to the issues of statutory compliance raised in this case.

B. The Cost Sharing Agreements

[28] Section 804.1(2) of the **Act** permits a regional district and a municipality to enter into a cost sharing agreement for the purpose of Part 26 services. Part 26 services under the **Act** are land use and planning management services. The text of this provision is as follows:

804.1 (2) The board and a municipality may enter into an agreement that the municipality is to share in some but not all of the costs of services under Part 26, to the extent set out in the agreement and in accordance with the terms and conditions for the municipality's participation established by the agreement.

[29] Pursuant to s. 804.1(2), Central Saanich and Metchosin separately entered into cost sharing agreements with the CRD. Under the agreements, each municipality agrees to pay the CRD \$100 each year. The CRD, in turn, agrees to apply that amount towards the costs of providing services under Part 26 in the

Electoral Area. The \$100 share is the maximum “cost of Services apportioned” under the agreement. Upon execution of the agreement, Central Saanich and Metchosin are “considered participants in the service of management and development” for the Electoral Area. Each director appointed to the CRD Board by the two municipalities “shall be entitled to a single vote on matters relating to [Part 26] Services” in relation to the Electoral Area.

[30] The petitioners argue that the agreements contravene the **Act**. They submit the agreements are invalid because there is no actual cost sharing between the CRD and the municipalities.

[31] Further, the petitioners state that the agreements have not sufficiently outlined the “terms or conditions” of the municipalities’ participation in cost sharing, which is required by s. 804.1(2). Specifically, the petitioners submit there are no terms respecting the apportionment of costs on the basis of participation or how costs are recovered in the participating areas. In addition, no area of either municipality is actually participating in services, as required by the **Act**.

[32] Section 804.1(2) is distinct because it speaks to sharing some of the costs for services to the “extent set out in the agreement and in accordance with the terms and conditions for the municipality’s participation” created pursuant to that agreement. Section 804.1(1)(c) provides that costs related to an agreement are to be recovered “in accordance with the agreement and the remaining costs are to be apportioned among the other participants.” The cost sharing agreements do not provide an explicit method for cost recovery or cost apportionment.

[33] The CRD relies on the wording in s. 804.1 to suggest that the Legislature's intent in drafting this provision was to allow the parties to agree to whatever contract terms they decide are appropriate. The mandatory condition is that the participants pay for "some but not all" of the costs of services and the CRD submits that the agreements comply with this statutory requirement. The CRD argues that if the court correctly uses the benevolent approach to construction, keeping in mind the purposes of the **Act**, the correct conclusion is that the CRD has acted within its jurisdiction by meeting the bare requirements set out in the provision.

[34] The meaning of cost sharing, read in its "entire context and in [its] grammatical and ordinary sense harmoniously with the scheme of the **Act**" leads me to conclude that these agreements should be connected to the actual, ongoing costs of services under Part 26 that are incurred by all participants: See E.A. Driedger, *The Construction of Statutes* (Toronto, Butterworths, 1974), at p. 67.

[35] I also find that cost-sharing arrangements created under the **Act** must have some basic parameters.

[36] What parameters should be in place can be inferred by using the broad and purposive approach to statutory interpretation. Within the context of this lengthy and detailed **Act**, s. 804.1 falls within a brief and specialized division, entitled "Cost Recovery for Services":

- Section 803 outlines the methods a regional district may employ to recover costs for services.

- Section 803.1 describes what costs incurred are included in the cost of services.
- Section 804 details how costs of providing a service must be apportioned among participants, depending on how service provision is established.
- Section 804.1, which includes the provision for cost sharing arrangements for some services, details specifically how to apportion costs, deem service areas, and opt out of or limit participation of cost sharing for Part 26 services.
- Section 804.11 guides how to exclude property under creditor protection from apportionment.
- Section 804.2 outlines how to manage valuation and apportionment adjustments.
- Section 804.3 discusses the basis upon which property value taxes must be imposed with respect to participating service areas.

[37] The grouping of provisions together suggests that the shared feature or subject matter is actual costs of services and management of service provision, the latter of which includes specific terms on cost apportionment and recovery, and a determination of service area and the actual costs included in the “costs of services”: See Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes* (Toronto: Butterworths, 2002), at 307.

[38] Section 804(2)(k) sets out the following respecting cost apportionment for cost sharing agreements related to services under Part 26:

804 (2) If the method of apportionment is not set by the establishing bylaw, the costs of providing a service must be apportioned on the basis of the converted value of land and improvements in the services area as follows:

...

(k) in the case of services under Part 26, in accordance with section 804.1 [*cost sharing for Part 26 services*]

[39] Examination of s. 804.1(2), the surrounding sections, and the **Act** as a whole satisfy me that a cost sharing agreement under the **Act** must have some connection to actual costs shared under Part 26 by the parties, and also must have, at a minimum, terms relating to cost apportionment, valuation of services shared, service area and cost recovery.

[40] This is not the case in these agreements. The terms and conditions established by the agreements relate solely to the payment of \$100 for a vote on land use decisions in the Electoral Area. This alone cannot be sufficient to create an actual cost sharing arrangement. The amount has no connection to actual costs of Part 26 services, cost apportionment or recovery, and is only related to services provided in the Electoral Area.

[41] I am also satisfied that the municipalities are not actually participating in services, as required by the **Act**.

[42] “Participation”, within the context of an agreement to share costs of services under Part 26, is not ambiguous. The subject matter of the agreement is cost sharing of services. The terms and conditions for participation, as well as the participation itself, must relate directly to that subject matter. Deeming a party a participant for the payment of \$100 cannot mean a party is actually participating.

[43] The CRD responds that participation includes a representative on the Land Use Committee weighing and voting on land use decisions in the Electoral Area. This limited action of the “participants”, however, is not connected to the actual purpose of the agreements, which is to share in the cost of services.

[44] Furthermore, all of the examples of participation provided by the CRD indicate that these agreements solely pertain to services in the Electoral Area and not in planning or land use management in Central Saanich or Metchosin.

[45] This “participation”, limited to the Electoral Area, is not consistent with the language of the **Act**. The provisions of the **Act** relating to costs of services, cost recovery and cost apportionment connect participation directly to the service area. The service area expands to include participating municipalities and electoral areas when they receive or share a particular service. When a cost sharing agreement is in place, the service area similarly expands to include those municipalities that are parties to the agreement. Here, the service area is solely the Electoral Area. This is not participation as the Legislature intended.

[46] What, then, is the meaning of a cost sharing agreement created pursuant to s. 804.1(2) of the **Act**? I am satisfied that sharing costs for services means shared

responsibility, reciprocal activities and a service area that includes all the participants, not just the Electoral Area. In addition, the terms or conditions of participation must include, at the bare minimum, a determination of actual costs for services, and a means of determining how to apportion and recover those costs.

[47] The “cost-sharing agreements” created between the CRD and Central Saanich and Metchosin do not meet the basic requirements under the **Act**. Accordingly, they are illegal.

C. The Voting Regime

[48] Having found that the cost sharing agreements are not valid, the CRD incorrectly determined which directors were eligible to vote on the impugned bylaws. Therefore, the Board did not vote on the bylaws in accordance with the **Act**.

[49] Both petitioners argue that ss. 791(2) and (3) governed the vote. Alternatively, WFP submits that s. 11 of the **Regulation** applied.

[50] Which section of the **Act** or the **Regulation** applied to the vote in question depends on a determination of how many and which of the Board’s directors were actually eligible to vote on the bylaws.

[51] Since the replacement in 1999 of the former Langford Electoral Area and the former Sooke Electoral Area, there has only been a single area director in the CRD representing the Juan de Fuca Electoral Area.

[52] The historical record shows that the other CRD member municipalities ceased participating in electoral planning, voting on bylaws, issuing permits and passing resolutions for Part 26 services in relation to the Electoral Area. This was largely because the other municipalities did not want to be involved in local political controversies in the Electoral Area.

[53] I note that the Association submits that when the municipalities stopped voting on land use issues related to the Electoral Area, they were acting contrary to the **Act**.

[54] When the other CRD municipalities stopped participating, the Board determined that only the Juan de Fuca Electoral Area director was eligible to vote. When only one director is entitled to vote, however, s. 791(11) of the **Act** provides:

- 791 (11) If, except for this subsection, only one director would be entitled to vote, each director who is present
- (a) is entitled to vote, and
 - (b) has one vote.

[55] For 13 months following the incorporation of the District of Sooke on September 2, 1999, s. 791(11) of the **Act** required that voting on Part 26 matters involve all Board members, including directors who represented municipalities that were far removed from the Electoral Area.

[56] On October 1, 2000, at the request of the CRD, the Province enacted an amendment to s. 11 of the **Regulation**, by B.C. Reg. 338/2000, which established a

limited list of directors who were to vote on matters under Part 26 of the **Act** when s. 791(11) applied to the Electoral Area.

[57] Section 11 of the **Regulation** provided as follows in 2000:

11 (1) This section applies to resolutions and bylaws under Part 26 of the *Local Government Act* that are in relation to all or part of the Juan de Fuca Electoral Area.

(2) As an exception to section 791(11) of the *Local Government Act*, if that provision would otherwise apply to a resolution or bylaw referred to in subsection (1) of this section, the persons entitled to vote on the resolution or bylaw

- (a) are the directors for
 - the Juan de Fuca Electoral Area,
 - the District of Central Saanich,
 - the City of Colwood,
 - the District of Highlands,
 - the District of Langford,
 - the District of Metchosin, and
 - the District of Sooke, and
- (b) one director for the District of Saanich, who must be
 - (i) the mayor of the municipality, or
 - (ii) if the mayor is not on the board, another director for that municipality who is chosen by the chair of the board to represent the municipality in these matters.

[58] Section 11 of the **Regulation** was amended a little more than a year later to further limit the municipalities that could vote on community planning matters in the Electoral Area with the enactment of B.C. Reg. 287/2001:

- 11 (1) This section applies if
- (a) a resolution or bylaw under Part 26 [*Planning and Land Use Management*] of the *Local Government Act* applies only to
 - (i) all or part of the Langford Electoral Area, as it existed on September 1, 1999, or
 - (ii) all or part of the Sooke Electoral Area, as it existed on September 1, 1999, and
 - (b) voting on the resolution or bylaw would otherwise be subject to the voting rule established by section 791(11) [*all directors vote if only one otherwise entitled*] of the *Local Government Act*,

and operates to provide exceptions to the rule established by that section.

(2) If the resolution or bylaw applies only to all or part of what was the Sooke Electoral Area, the persons entitled to vote on the resolution or bylaw are the directors for

- (a) the Juan de Fuca Electoral Area,
- (b) the City of Colwood,
- (c) the District of Langford,
- (d) the District of Metchosin, and
- (e) the District of Sooke.

(3) If the resolution or bylaw applies only to all or part of what was the Langford Electoral Area, the persons entitled to vote on the resolution or bylaw are

- (a) the directors for
 - (i) the Juan de Fuca Electoral Area,
 - (ii) the District of Central Saanich,
 - (iii) the District of Highlands,
 - (iv) the District of Langford, and

- (b) one director for the District of Saanich, who must be
 - (i) the mayor of the municipality, or
 - (ii) if the mayor is not on the board, another director for that municipality who is chosen by the chair of the board to represent the municipality in these matters.

[59] Section 11(1) of the **Regulation** is expressly worded to be conditional and was not meant to override the statutory scheme. It only applies where a voting on a resolution or bylaw would otherwise be subject to s. 791(11) of the **Act**, that is, where all directors vote if only one was otherwise entitled.

[60] In summary, the **Regulation** meant to address the situation that occurred when all municipalities had effectively opted out of decision making on land use matters in the Electoral Area, resulting in only one director being eligible to vote. This, in turn, triggered the provision that all directors must vote. The **Regulation** corrected this situation, and ensured that the directors from municipalities directly affected by land use decisions in the Electoral Area were the only directors entitled to vote.

[61] I am satisfied that only the Juan de Fuca Electoral Area director was entitled to vote on the impugned bylaws, as the other municipalities had opted out of land use planning in the Electoral Area.

[62] Section 804.1(3) of the **Act** allows a municipality to opt out of participation in services under Part 26 as follows:

804.1 (3) Subject to subsection (4), a municipality may opt out of participation in services under Part 26 by giving notice to the board, before August 31 in any year, that until further notice it will no longer share the costs of services under Part 26.

[63] Section 791(13) of the **Act** disentitles municipalities that have given notice under s. 804.1(3) from voting on these land use bylaws or resolutions unless they have limited continued participation. The section reads as follows:

791 (13) In relation to a municipality that has given notice under section 804.1(3) [*withdrawal from participation in Part 26 services*],

...

(b) effective the year following the year in which notice is given and continuing until the municipality again becomes a participant, the director for that municipality is not entitled to vote on any resolution or bylaw under Part 26 except, if applicable, in relation to participation under section 804.1(6) or (7) [*limited continued participation*].

[64] Both petitioners argue that the CRD municipalities failed to provide notice to opt out of participation in relation to Part 26 services in the Electoral Area. The CRD argues that there was sufficient notice to the Board that the municipalities had opted out.

[65] I agree with the respondent. There is sufficient notice in the historical record and the actions of those municipalities demonstrating that they had opted out of participation.

[66] Section 804.1 does not provide that notice to opt out of participation in services under Part 26 take a particular form to be effective: ***Pacific Playgrounds***

Holdings Ltd. v. Comox-Strathcona (Regional District), 2005 BCSC 633, 8 M.P.L.R. (4th) [*Pacific Playgrounds*], at para. 70. The section solely mandates that notice be provided by August 31 in any year. If the municipality is already a participant to a cost sharing agreement, it may only give notice in the last year of the term of that agreement. Once notice is given, the municipality “ceases to be a participant in the services, effective at the start of the following year”.

[67] In *Pacific Playgrounds*, one of the issues before the court was whether some directors were improperly denied the right to vote on a bylaw because they had not provided adequate notice to opt out of cost sharing under s. 804.1(3). Mr. Justice Ehrcke held that the municipalities provided sufficient notice for the purposes of that section when they failed to reply to CRD letters notifying them of an end to their participation and ceased to provide any further cost sharing payments for services: *Pacific Playgrounds*, at para. 70.

[68] In this case, nine CRD municipalities provided affidavits, presented by the CRD, all of which included copies of resolutions opting out of participating in or sharing the costs of Electoral Area planning. The resolutions, the majority dated in the late 1980s and early 1990s, referred to letters received from the CRD concerning cost sharing for Electoral Area planning services and their decisions to opt out until further notice, pursuant to what was then the *Municipal Act*. I find this was sufficient notice to opt out of participation in land use planning and management services in the Electoral Area.

[69] The historical record shows that the Province determined that all 13 municipalities had opted out of participation before 2000. In June of that year, the Deputy Minister of what was then Municipal Affairs sent a letter to the Executive Director of the CRD confirming that s. 791(11) of the **Act** governed voting on land use matters in the Electoral Area because all 13 municipalities had opted out of participation under the **Act**. The letter, pre-dating the **Regulation**, responds to CRD concerns about voting on land use issues in the Electoral Area.

[70] Finally, the fact that the CRD entered into the cost sharing agreements with Metchosin and Central Saanich demonstrates that all CRD member municipalities determined that they had effectively opted out, as the purpose of these agreements was to provide for the participation of Metchosin and Central Saanich in land use decisions in the Electoral Area. These agreements were voted on and approved by the entire Board, the only director voting against them being the mayor of Sooke.

[71] Even though the CRD correctly interpreted the **Act** by determining that all municipalities had opted out, it incorrectly interpreted which directors were eligible to vote on the impugned bylaws. As I have found that the cost sharing agreements are not valid, the directors representing Metchosin and Central Saanich were not entitled to vote pursuant to the agreements. Only the Electoral Area director was eligible to vote on the impugned bylaws. Therefore, s. 11 of the **Regulation** applied to the vote at issue.

[72] Since the CRD incorrectly interpreted which provision under the **Act** governed the vote and did not, as a result, vote on the impugned bylaws in accordance with the **Act**, the bylaws are illegal and quashed.

IV. Conclusion

[73] In summary, reading the pertinent provisions and the **Act** as a whole, I am satisfied that the CRD, in creating the cost sharing agreements with Metchosin and Central Saanich, did not incorporate the appropriate terms. As a result, the agreements are void. Thus, s. 11 of the **Regulation** governed the vote on the impugned bylaws.

[74] If a local government fails to abide by a procedural provision of the **Act** when adopting a bylaw, or if a bylaw is itself contrary to a provision of the **Act**, then the bylaw in question is illegal. In **Canadian Pacific Railway Co. v. Vancouver (City)**, 2004 BCCA 192, 237 D.L.R. (4th) 40, at para. 104; aff'd on other grounds, 2006 SCC 5, [2006] 1 S.C.R. 227, the British Columbia Court of Appeal stated the following about a local government's need to comply mandatory procedures set out in the **Act**:

[104] It has been held that compliance with the statutory provisions for notice and other procedural matters is at the very root of Council's authority to adopt a by-law *i.e.*, that it is a condition precedent to Council's authority so to act.

A local government's compliance with provisions on voting, when adopting a bylaw pursuant to the **Act**, is, similarly, a mandatory procedural requirement.

[75] As the CRD failed to comply with the requirements of s. 791 of the **Act**, the Board failed to meet a condition precedent to its authority to adopt the bylaws. As a result, the impugned bylaws must be quashed whether or not the CRD acted in good faith or whether there was actual prejudice to the petitioner: ***Pacific Playgrounds***, at para. 83.

V. Disposition

[76] As I have found that:

1. The agreements made April 12, 2006 between the Capital Regional District and the Corporation of the District of Central Saanich or the District of Metchosin, which purport to provide for cost sharing in relation to the management of development under Part 26 of the ***Local Government Act*** in the Juan de Fuca Electoral Area are unlawful; and
2. The provisions of Order in Council No. 287/2001, that is, s. 11 of the ***Regulation***, govern the vote of directors at the Capital Regional District for the purposes of making decisions related to Part 26 services of the ***Local Government Act*** in the Juan de Fuca Electoral Area;

Bylaws 3474, 3495, 3497, 3498, 3499, and 3500, adopted April 23, 2008 are quashed. The approval of Capital Regional District Bylaws 3474, 3495, 3497, 3498, 3499, and 3500 given by the Minister of Community Services on April 14, 2008 is void, as there were no valid bylaws to approve.

[77] The petitioners will have their costs.

"R.W. Metzger, J."
The Honourable Mr. Justice Metzger