

**A Summary of Recently Released Information about the
Governance of Sechelt Community Projects Incorporated and
Recommendations for the Achievement of Transparency and
Accountability**

Sunshine Coast Conservation Association

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Introduction

Openness, transparency and accountability are fundamental to democratic governance. Over the last few years, there have been many calls from the public for greater adherence to these essential qualities with regard to Sechelt Community Projects Incorporated (SCPI), the community forest. The purpose of this paper is to provide recently released information to the public and its elected representatives for the purpose of promoting openness, accountability and good governance of the Sunshine Coast community forest.

The primary sources of information for this paper are Freedom of Information requests (FOI), publicly available documentation, legislation and provincial government publications such as *The Guide to Municipal Corporations*.

Of note, most of the current members of the municipal council agreed in an ad, during the last civic election, with the following statement:

That open and transparent governance of the Community Forest... is a must, including public participation in the selection of directors.

-Ad sponsored by Concerned Citizens & SCCCRD

We believe the time has come for Sechelt Municipal Council to take appropriate steps to ensure that good governance of its corporation is achieved.

Summary of Recommendations:

- That Mayor and Council request a report from staff to initiate discussion of the Partnering Agreement in open sessions in order to seek the approval of the Agreement by the electors;
- That Mayor and Council amend extensively or entirely rewrite the Articles of Incorporation to reflect the right of Council to ensure that principles of sound governance are achieved by its corporation;
- That Mayor and Council give direction to its corporation to establish an open and transparent governance structure such that the business of the corporation is not hidden behind layers of "independent third party" contractors and sub-contractors;
- That Mayor and Council give direction to its corporation to establish an open transparent process for nominations to the corporation's Board of Directors;
- That Mayor and Council give appropriate direction to Sechelt Community Projects Incorporated to ensure that it does not overstep its mandate by interfering in the affairs of other local governments;
- That Mayor and Council discuss the *Joint Watershed Management Agreement* in open session and subsequently define its relationship to, and participation in, the Agreement.

1. The Partnering Agreement

Whenever municipalities establish corporations, or join with other bodies as partners in a corporation, BC's *Community Charter* stipulates the establishment of a Partnering Agreement between the municipality and the new public corporation. The *Community Charter* requires that these agreements be put before the electors for approval because they commit local taxpayers' money to the corporation.

Elector approval is also needed for loans or loan guarantees that are provided to a municipal corporation under an agreement

- *Local Government Corporations Guide, page 23*

The only exception to this requirement is if the Inspector of Municipalities gives permission and waives the elector approval obligation.

The Partnering Agreement is one of the two documents that determine the relationship between the municipality and its corporation (the other is the Articles of Incorporation). The District of Sechelt established a partnering agreement with SCPI on May 25, 2006. The intention to establish the agreement was advertised in the *Coast Reporter* on May 9, 2006. The ad stated that the agreement would authorize the lending of up to \$400,000 to Sechelt Community Projects Incorporated.

The SCCA filed a Freedom of Information (FOI) request on July 4, 2008 that was partially fulfilled on November 3, 2008. The request asked for, among other items, the motion of District of Sechelt Council that authorized the lending of taxpayers money to the corporation. No such motion was produced. Instead, a copy of the partnering agreement was provided. In other words, the partnering agreement that allows municipal funds to be lent to SCPI over the entire life span of the corporation appeared to have been implemented without seeking the approval of the electors.

In an FOI request in February 2010, we again asked for a copy of "the motion" authorizing the partnering agreement. This time we received a copy of a proposed motion. There was no indication that the motion had ever been discussed or passed in open session. Did the District of Sechelt have the permission of the Inspector of Municipalities in lieu of the electors' assent? There is no indication of that, either. Whatever the legalities of the current situation, it is apparent that, from the very beginning, standards of openness, transparency and established democratic practices have not been consistently observed.

2. Communications Between the Municipality and the Municipal Corporation

One of the important reasons why municipalities establish corporations is to provide beneficial services to its citizens, while limiting the liabilities of the public. Obviously, the business

interests of a municipal corporation can easily conflict with the broader interest of the public. A director of a municipal corporation is only obligated to protect the interests of the corporation. An elected person, on the other hand, is always obligated to represent the interests of the electors and be accountable to the electors. Municipal councils are not “in the business” of business:

Corporate directors and municipal councillors have different obligations. A corporate director is required to “act honestly and in good faith with a view to the best interests of the company.” A municipal councillor is required “to consider the well-being and interests of the municipality and its community.”

- *Local Government Corporations Guide, page 32*

It is the responsibility of municipal council to ensure that, in any conflicts of interest between the public and the municipal corporation, the public interest prevails over the narrower interests of the corporation. The municipality is also responsible for ensuring that its corporation stays within its business purpose and is governed appropriately.

An open conduit of communication between the two bodies is essential if the municipality is to meet its obligations to the electorate and the corporation is to meet its obligations to the municipality. Typically, municipal corporations have elected officials serving on the corporation’s board of directors. Another common practice is to have elected officials designated as observers. In either case, the purpose of an elected presence on the corporate board is to support open communication and ensure good governance of the corporation. Also note that an elected person has a legal right to all information about the municipal corporation (confidential obligations may apply).

The community forest corporation has no elected District of Sechelt officials sitting on its board of directors and there are no elected officials that attend board meetings as designated observers. The District of Sechelt has its corporate officer serving as a director on the corporation’s board, which is not necessarily inappropriate. However, each director of the municipal corporation, including the municipality’s corporate officer, has signed an agreement not to disclose information to the “sole shareholder” (see attached Director’s Agreement). This is inappropriate:

10. All Board discussions, votes, and documents are strictly confidential and shall not be released to third parties, including our sole shareholder, unless such release is specifically approved by Board resolution.

-*SCPI Governance Policy, Board Rules, page 5*

The Directors’ Agreement obstructs the flow of information to the District of Sechelt and directly conflicts with the municipality’s obligation to ensure appropriate oversight and sound governance. It also interferes with the obligation of elected people to be accountable to the electors. If SCPI is to gain the trust of the public and be a legitimate *community* forest corporation, it must accept and meaningfully accommodate the oversight of elected people.

3. Good Governance

In the context of a municipal-corporate partnership, the municipal partner must be responsible for ensuring that the corporation practises good governance, while not interfering with the actual legitimate business of the corporation. Municipalities are obligated to achieve the standards set out in the *Community Charter* and the *Local Government Act*. A municipal corporation is not directly obligated to comply with these standards in the same way that local governments are. However, it is a measure of sound governance that a municipality ensures its corporation achieves the same standards as the parent municipality.

Ongoing “good housekeeping” on the part of the municipal corporation will include... ensuring that, whenever possible, the municipal corporation follows the legislative rules applicable to the parent shareholder.

-*Local Governments Corporation Guide, page 34*

Please note that it is well within the role of a municipality in a partnership with its municipal corporation to ensure that the appointed board of the corporation does achieve standards of good governance. Failure to practise good governance can have far-reaching implications. Such a failure may be grounds for a court to lift the “corporate veil”, meaning to publicly examine the decisions and deliberations of the corporation’s directors. Other examples in which a court may lift this veil include fraud, negligence, tax evasion and improper signing of documents. Good governance is also fundamental to the corporation’s relationship to the public.

As with other municipal initiatives, informing and involving the public can be key to winning support ... it communicates to the electorate that the municipality is committed to an open, transparent and accountable approach to conducting business.

-*Local Governments Corporations Guide, page 29*

Further to good governance, the *Community Charter* prohibits local governments from “giving a benefit” to a business. This means that when municipalities retain the services of a business, they make the work available through an open bidding process to all qualified businesses that can meet published contract requirements. In this way the benefit to a business is an opportunity, without prejudice, for all businesses.

Observe restrictions on providing assistance to business.

-*Local Government Corporations Guide, page 23*

It would be a breach of the *Charter* for a municipality to give a contract on the basis that someone is a friend, relative or supporter. The Sechelt community forest corporation should meet the standard of the *Community Charter*.

4. Letting of Contracts

On June 9, 2009 the SCCA filed a Freedom of Information request seeking details about the financial statements that had been released at SCPI's annual general meeting the previous spring. We asked for, among other things, information about how many employees worked for the corporation and what their wages and benefits were in 2008 and in particular, what benefits were provided to the "operations manager". Sixty days later, SCPI made a partial response. The Office of the Information and Privacy Commissioner (OIPC) negotiated a further disclosure on our behalf, which we received on January 5, 2010. The disclosure details that:

Despite its frequent references to its staff and employees, the community forest corporation has no staff or employees;
all the management of the corporation's logging business is conducted through a contract with one "independent third party" consulting firm which is owned by the operations manager;
the contract's benefits include \$65/hour for the operations manager's time, \$34.88/hour for administrative support, \$825/month vehicle allowance, \$100/month for a cell phone;
additionally, the contract provides for a profit margin of 10% of the value of any subcontract let by the consulting firm as well as various other smaller expenses;
the contract does not specify limits or deliverables;
SCPI paid the operations manager's firm \$273,808.50 in 2008, the second year of a four year contract.

We are also aware that the operations manager resigned his position as a founding director of the corporation in order to assume the position of operations manager.

Concerning general practices of letting contracts, SCPI does not have a publicly available policy detailing what its letting procedures are. A few contracts have been publicly posted with some information about how bids will be evaluated, but many have not. SCPI meanwhile maintains that it has only let one contract (the contract with the operations manager's firm). Interestingly, according to FOI released information, the corporation claims not to have records showing how much money the operations manager actually made from the 2008 contract. Most importantly, there does not appear to have been any effort to ensure that contracting and subcontracting procedures are carried out in the open and transparent manner intended by the *Community Charter*.

None of the above is necessarily evidence of a breach of law. However, we wish to stress that the District of Sechelt, as a partner and sole shareholder in this enterprise, must be accountable to the electors for the current state of affairs. The District is clearly mandated to ensure that the corporation is responsible in its business practices and that openness, transparency, accountability, fairness and good governance are achieved.

5. Company Involvement in Public Affairs

Every corporation must have a defined business purpose. This is usually expressed in its mission statement. Limits to the business activities of the corporation are stated in the Articles of Incorporation. Sechelt Community Projects Incorporated mission statement is:

To profitably manage the Sechelt Community Forest in a sustainable, effective and environmentally sensitive manner with broad community participation and support.

However, the community forest corporation has regularly intervened in the sustainability and environmental affairs of local governments. Prominent examples include lobbying against Land and Resource Management Planning (LRMP) for the Sunshine Coast Forest District and opposing the Sunshine Coast Regional District in its case defending a Local Board of Health Order in 2007. The community forest corporation's public opposition to the Sunshine Coast Regional District and the Sechelt Indian Band Government *Joint Watershed Management Agreement* (JWMA) is another case in point. It is not the stated business of the corporation to cultivate opposition to local government initiatives, which are undertaken on behalf of the public. Giving direction and setting specific limits on its corporation's activities are actions well within the normal authority of the municipal partner.

A municipality can maintain control over company operation by including articles that circumscribe the powers of the directors and officers and reserve certain powers for exercise by the municipality as shareholder. These articles can identify certain material actions that cannot be carried out without consulting the board or obtaining shareholder approval. They can also impose other restrictions on the company's operation and, if desired, the objectives of the corporation to ensure that it operates within a more limited field.

-Local Government Corporations Guide, page 21

Councillor Ed Steeves signed the JWMA on October 1, 2005 on behalf of the District of Sechelt, as did the representatives of the Sechelt Indian Band, the Town of Gibsons and each rural area. Since then the District of Sechelt's participation in the Agreement has become confused. Although the Mayor actually holds a seat on the JWMA Committee, it appears that District of Sechelt Council has never discussed the Agreement at a council meeting. It seems reasonable, having created the community forest corporation, that the Council should clarify its relationship to the JWMA.

6. Conclusion and Recommendations

It would appear that the community forest corporation has been deliberately structured to minimize public scrutiny *and* the oversight of its partner and sole shareholder, the District of Sechelt. It is noteworthy that the corporate structure, as revealed in FOI released documents, is different from and conflicts with the structure presented to the public in SCPI's formal documents, communications, press releases and advertising. Information is not allowed to flow

between the District of Sechelt and its corporation and this has resulted in a lack of accountability to the municipality and a similar lack of accountability of elected officials to the electorate.

The community forest appears to function as a shell for a private consulting firm, which reaps most of the benefits. Far from approaching the standards of the *Community Charter*, Sechelt Community Projects Incorporated management style appears to be cronyism in action; arbitrary authority vested in an “independent third party” contractor. An open, transparent and accountable management system would create a better future, benefit all and remove the air of secrecy and special interest that has plagued the enterprise from the beginning. The currently elected representatives of the District of Sechelt inherited responsibility for the municipal corporation but are, nonetheless, now accountable for it. We urge the present Mayor and Council to rectify this untenable situation.

We recommend that:

Mayor and Council request a report from staff to initiate discussion of the Partnering Agreement in open sessions in order to seek the approval of the Agreement by the electors;

Mayor and Council amend extensively or entirely rewrite the Articles of Incorporation to reflect the right of Council to ensure that principles of sound governance are achieved by its corporation;

Mayor and Council give direction to its corporation to establish an open and transparent governance structure such that the business of the corporation is not hidden behind layers of "independent third party" contractors and sub-contractors;

Mayor and Council give direction to its corporation to establish an open transparent process for nominations to the corporation's Board of Directors;

Mayor and Council give appropriate direction to Sechelt Community Projects Incorporated to ensure that it does not overstep its mandate by interfering in the affairs of local governments;

Mayor and Council discuss the *Joint Watershed Management Agreement* in open session and subsequently define its relationship to, and participation in, the Agreement.