

**LOWER MAINLAND TREATY ADVISORY COMMITTEE  
EXECUTIVE COMMITTEE  
REGULAR MEETING**

**February 9, 2005**

Minutes of the Regular Meeting of the **Lower Mainland Treaty Advisory Committee (LMTAC) Executive Committee** scheduled 2:00 p.m. – 3:45 p.m. on Wednesday, February 9, 2005, in the 2<sup>nd</sup> floor Café West Boardroom, 4330 Kingsway, Burnaby, B.C.

<b>ATTENDANCE:</b>		
<b>JURISDICTION:</b>	<b>LMTAC ELECTED REPRESENTATIVE:</b>	<b>LMTAC STAFF REPRESENTATIVE:</b>
Greater Vancouver RD	Mayor Ralph Drew ( <b>Chair</b> )	Marino Piombini
Maple Ridge, District of	Councillor Candace Gordon ( <b>Vice Chair</b> )	
Bowen Island, Municipality of	Mayor Lisa Barrett	
Richmond, City of	Councillor Linda Barnes (arrived 2:28 p.m.)	Terry Crowe (arrived 2:20 p.m.)
Squamish, District of	Councillor Corinne Lonsdale	
Surrey, City of	Councillor Penny Priddy (arrived 2:09 p.m.)	
West Vancouver, District of	Councillor Jean Ferguson	
<b>LMTAC STAFF ATTENDANCE:</b>		
Kirstie Pirie	LMTAC Manager	
Regan Schlecker	Aboriginal Affairs Analyst	
Joy Smith	Administrative Assistant (departed at 3:00pm)	
<b>ALSO PRESENT:</b>		
Carolyn MacEachern	Lidstone, Young, Anderson (departed 3:50 p.m.)	
Stephanie James	Lidstone, Young, Anderson (departed 3:50 p.m.)	
<b>PREPARATION OF MINUTES:</b>		
Karen Miller	Recording Secretary, Raincoast Ventures	

**Call to Order**

Chair Drew confirmed a quorum was in attendance and called the meeting to order at 2:05 p.m. A round table of introductions was initiated.

**1. AGENDA FOR ADOPTION**

**1.1 February 9, 2005**

**It was MOVED and SECONDED**

THAT the Agenda for the Regular Meeting of the LMTAC Executive Committee scheduled February 9, 2005, be adopted as presented.

**CARRIED UNANIMOUSLY**

**2. MINUTES FOR ADOPTION**

**2.1 January 12, 2005, 2005 LMTAC Executive Committee Meeting**

**It was MOVED and SECONDED**

THAT the Minutes of the Regular Meeting of the LMTAC Executive Committee held January 12, 2005 be adopted as circulated.

**CARRIED UNANIMOUSLY**

**3. DELEGATIONS**

**Freedom of Information and Protection of Privacy Act**

- a) *Correspondence dated February 1, 2005 from Carolyn M. MacEachern (Lidstone, Young, Anderson);*

- b) *Memorandum of Understanding between the Province of British Columbia and the Union of British Columbia Municipalities on Local Government Participation in the Negotiation of Treaties and Agreements dated January 15, 2003;*
- c) *Lower Mainland Treaty Advisory Committee Operating Procedures dated October 27, 2004;*
- d) *Terms of Reference for the Lower Mainland Treaty Advisory Committee's participation in the Lower Mainland Area Treaty Negotiations*
- e) *Excerpt: Community Charter (SBC 2003) Chapter 26 – Part 4 – Public Participation and Council Accountability; and*
- f) *Excerpt: Sections 12 – 22 Freedom of Information and Protection of Privacy act (RSBC 1996) Chapter 165.*

Chair Drew welcomed the delegation of Carolyn MacEachern and Stephanie James from Lidstone, Young and Anderson to provide an introductory seminar on the Freedom of Information and Protection of Privacy Act and its potential implications for the LMTAC.

Ms. MacEachern reviewed the legal opinion provided in correspondence dated February 1, 2005 noting that based on the language in the *Freedom of Information and Protection of Privacy Act* (the "Act") and LMTAC's Terms of Reference and Operating Procedures it was likely that LMTAC was captured within the scope of the Act. She referenced a list of definitions in the Act as applicable to public and local government bodies including any Board, Committee, Commission, Panel, Agency or Corporation that was created or owned by a body; and all the members or officers under the authority of the body.

Chair Drew provided clarification that LMTAC was a committee created out of an agreement between the Union of B.C. Municipalities (UBCM) and the Province of BC, noting that the UBCM was deemed not to be under the scope of the Act.

Ms. MacEachern, referenced the Memorandum of Understanding (MOU) between the Province and the UBCM, Roles and Responsibilities, Structure – TAC or Alternate; and provided the opinion that it was likely that LMTAC would be found to be a committee that was created by a municipality or a regional district. As all representatives were from local governments, and looking at the broad language, it seemed that given the purpose of the Act to make public bodies more accountable and open, that LMTAC would be caught within the definition.

Chair Drew noted that the Terms of Reference for LMTAC included LMTAC under the scope Freedom of Information (FOI). Committee members noted that UBCM did not appoint LMTAC and that each municipal council or regional district board appoints members to LMTAC directly and local government bodies created the UBCM.

**2:20 p.m.**

Terry Crowe, Manager, Policy Planning Department, City of Richmond arrived.

It was acknowledged that there was no jurisprudence to provide guidance within the B.C. context, and that LMTAC would likely fall under personal privacy legislation.

**2:28 p.m.**

Richmond Councillor Linda Barnes arrived.

Ms. MacEachern emphasized that the Act applied to all records in the control of the "body"; which would include books, documents, maps, letters, vouchers, photographs and anything else that was stored, including emails, but not record producing programs. She conveyed a caution relative to the content of email correspondence, and acknowledged that some discretionary items could be withheld.

In response to members' queries, Ms. MacEachern referenced the definition of "Third Party" within the Act, and provided the following comments:

- some information could be severed from a document where possible and necessary;

- public bodies have the responsibility to respond openly and accurately;
- response timeline was typically within 30 business days but it could be extended in certain circumstances;
- maximum fees are set, with each applicant being entitled to three hours research free;
- information that would be withheld was described within mandatory provisions of the Act (e.g. Section 12(1));
- in the event that an FOI request was received by a municipality relative to land appraisals for which the Council had not yet made a decision on, it could be argued that disclosure of the information would be harmful to the municipality's financial/economic interest (Section 17 (1));
- there was a mechanism under the Act to transfer requests;
- as a risk management consideration for LMTAC it was noted that an FOI request could be transferred to a municipal or provincial jurisdiction which originally provided LMTAC with information; and
- information could be withheld which would reveal the substance of deliberations at In-camera meetings (i.e. Minutes of In-camera meetings).

It was noted that much confidential information was received by LMTAC. Ms. MacEachern offered that Sections 16 and 17 of the Act were the most important sections for LMTAC as they referenced the disclosure of information harmful to intergovernmental relations or negotiation.

The meeting noted that there was an expectation that all documents would be considered within an FOI request in order to make a determination as to whether or not the information could be withheld. It was offered that access would have to be given to as much as possible, and then documents withheld listed along with the reason access to them was denied.

Ms. MacEachern added that it was mandatory to withhold information that would harm the business interests of a third party. She advised that personal information about a third party - not in a business context - would be better severed. The meeting acknowledged that in cases where disclosing personal information would be an unreasonable invasion of the person's privacy it should be withheld.

The meeting was informed that an applicant could request the Commissioner to review an FOI decision if the mediation process did not produce the desired outcome.

### **3:00 p.m.**

Joy Smith departed the meeting.

The issue of custody and control was discussed; and it was acknowledged that care should be taken in writing notes during meetings as notebooks could be requested as part of an FOI request. Aboriginal government definition within the Act was referenced and acknowledged as "*an organization exercising governmental function*".

Ms. MacEachern reviewed how to process FOI access requests. It was noted that a detailed cost estimate could be provided to the applicant as well as a requirement to pay all or a portion of the cost up front. It was noted that the response to applicants must include information on how to make a request to the Commissioner for a review. Although the mediation process resolves most issues, an applicant can choose to have a review processed as an inquiry through the commissioner. A Commissioner's review was generally done in writing; and the Commissioner may delegate decision-making authority. An individual or body also has the right to challenge the decision of the Commissioner in the Supreme Court.

The meeting heard FOI case examples cited by Ms. MacEachern along with recommendations for risk management. It was emphasized that all applicable sections of the Act should be cited with respect to the various reasons for withholding specific information. Additionally it was noted that:

- care should be exercised with respect to what was put in writing;
- reasons for an FOI request were irrelevant – information was either disclosable or not under the Act;

- ensure it was explicit when documents were given or received in confidence -- when in doubt put the "Confidential" stamp on documents as an explicit reference point;
- the Commissioner reviews the intention of both the supplier and the receiver of information designated as received in confidence; and
- there was no exception for "Draft" reports per se.

Custody and control of LMTAC agenda packages was queried as municipalities were subject to FOI requests. Chair Drew noted that LMTAC material should be referred back to LMTAC if it was a transferable body. Ms. MacEachern offered that if a local government were asked for information with respect to LMTAC they would have to process the request if LMTAC was not a transferable body.

When queried as to whether the Nisga'a were subject to federal FOI legislation, Ms. MacEachern indicated that she would research the answer.

The meeting and delegation discussed the contextual nature of legal advice and information with respect to client/solicitor privilege. It was also noted that the use of the term "without prejudice" was a legal term and did not have any affect under FOI.

Chair Drew thanked the delegation for their presentation.

**3:50 p.m.**

Ms. MacEachern and Ms. James departed the meeting.

**4. LMTAC REPORTS**

No reports were presented.

**5. TABLE PROGRESS REPORTS**

**5.1a) Katzie**

The meeting was advised that Katzie and GVRD representatives would be meeting on April 26, 2005 from 10:00 a.m. to 3:00 p.m. at the GVRD offices on the subject of sustainability in the region. It was acknowledged that LMTAC was invited; and that Katzie had expressed interest in inviting several mayors and the Director of Electoral Area A.

**5.1b) Musqueam** No items were presented.

**5.1c) Squamish** No items were presented.

**5.1d) Tsawwassen** No items were presented.

**5.1e) Tsleil-Waututh**

The meeting was advised that a luncheon had been scheduled for February 16, 2005 with representatives from the District and City of North Vancouver, GVRD and Parties to the negotiations, including LMTAC as part of the BC team. The objective of the informal luncheon was to encourage and develop intergovernmental relationships.

**Request for Action**

*It was requested that staff follow up to provide clarification on who was invited to the February 16, 2005 luncheon.*

**5.1f) Other** No items were presented.

**6. SUBCOMMITTEE REPORTS**

**6.1 Finance Administration Sub-committee (FASC)**

a) *Lower Mainland Treaty advisory Committee Preliminary Statement of Expenses and Recoveries From January 1, 2004 to December 31, 2004; and*

- b) *Summary – Feedback Form – LMTAC Orientation/Refresher Session 2005 dated January 21, 2005.*

Vice Chair Gordon advised that the financial statements would be audited at the end of March 2005, that approximately \$10,000 would be transferred to the Treaty Table Fund, and that there was no need to take funds from this Fund as a result of the excellent financial management.

Staff was thanked for their organization of an effective orientation session for new and returning LMTAC members. It was noted that 30 people had attended and that feedback on the event had been very positive with participants having been impressed with the wealth of information presented and having expressed interested in having greater opportunity for questions and answers.

A recommendation was offered that the GVRD should consider an orientation session for all Councils.

## **7. CHAIR AND STAFF REPORTS**

### **7.1 Chair's Report**

Chair Drew informed the meeting that LMTAC was anticipating an article being published in the Vancouver Courier. A copy of the article would be circulated to members when published. Once published, a member suggested that members review the article and consider sending feedback to the Vancouver Courier Editor.

Chair Drew advised that Councillor Lee Rankin was no longer a member of LMTAC it was suggested that an appreciation event be organized after the LMTAC Executive Committee meeting on March 9, 2005 to formally thank him for his service.

### **7.2 Staff Report**

No items were presented.

## **8. MISCELLANEOUS REPORTS**

### **8.1 UBCM**

*Correspondence dated January 28, 2005 from Ted Armstrong, Chair, First Nations Relations Committee, UBCM to Lorne Brownsey, Deputy Minister, Treaty Negotiations Office.*

The meeting was informed that a conference call of TAC chairs was organized by the UBCM for February 2, 2005 in follow up to the fall 2004 meeting. The meeting was informed that the province would facilitate meetings if a First Nation and the GVRD wanted to discuss options for participation, however the tone of discussion at the provincial level was a non-mandatory requirement for participation in the regional district.

Kirstie Pirie, LMTAC Manager, advised that the UBCM had indicated an interest in having more regular joint TAC conference calls at the Chair and staff level, that a transition funding consultant would be hired jointly between the TNO and MCAWS, and that the UBCM had encouraged local governments and First Nations to engage in intergovernmental discussions but that it was up to the individual tables and communities to work with each other.

### **8.2 Federation of Canadian Municipalities (FCM)**

No items were presented.

### **8.3 Lower Mainland Municipal Association (LMMA)**

No items were presented.

## **9. OTHER BUSINESS**

## **10. INFORMATION**

The LMTAC Executive Committee received the following for information at the meeting:

- 10.1 Honorarium and Expense Form

11. **NEXT MEETING: February 23, 2005**

12. **CONCLUSION**

**It was MOVED and SECONDED**

THAT the Regular Meeting of the LMTAC Executive Committee held February 9, 2005 be now concluded.

**CARRIED UNANIMOUSLY**

(Time: 4:09 p.m.)