

Re: U.B.C.M. Circular dated December 10, 1974
Laws Declaration Act, Section 44
(Council Agenda Item 3(b), December 30, 1974)

On December 30, 1974, the following motion was passed in connection with consideration of a U.B.C.M. circular pertaining to the Laws Declaration Act:

"That a legal interpretation be provided of the changes as far as Burnaby is concerned in connection with the past Section 44 and present Section 44 of the Laws Declaratory Act, plus what the Act is in the Federal Government and the effect on Burnaby before and now and other sections relating to the right of the Municipality being overridden by the Provincial Government and any Federal Section that relates to the same problem or situation."

Following is the Solicitor's opinion on this matter:

"The present Provincial Government in 1974 enacted a new Interpretation Act. Section 13 of that Act provides as follows:

'Unless an enactment, otherwise specifically provides (underlining is our own), every Act, and every enactment made thereunder, is binding on Her Majesty.'

Before the enactment of Section 13, the Crown Provincial was not bound by any municipal bylaw. Section 44 of the Laws Declaratory Act provides that:

'An enactment that would, except for this Section, bind or affect the Crown in respect of

- (a) the use or development of land, or
- (b) the planning, construction, alteration, servicing maintenance or use of improvements as defined in the Assessment Act,

does not bind or affect the Crown.'

The enactment of Section 44 is an enactment which "otherwise specifically provides" and to that extent limits the application of Section 13 of the Interpretation Act. There is no similar Federal legislation so far as I am aware. The Municipality, of course, may not legislate in those areas reserved to the Federal Government under the BNA Act."

This is for the information of Council.