

Council Orientation Municipal Law

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Presentation Outline

1. Municipal Powers and Jurisdiction
2. Roles and Responsibilities of Council and Staff
3. Council Meetings and Procedures
4. Accountability and Transparency
5. Legality of Municipal Decisions
6. Municipal Conflict of Interest Act
7. Municipal Records / MFIPPA

Municipal Powers and Jurisdiction

“Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters.”

Municipal Powers and Jurisdiction

- No constitutional status
 - Powers granted and limited by statute
 - No power to legislate in areas of federal jurisdiction (e.g. criminal law)
- Corporations (but not like business corporations)
 - Can sue and be sued
 - Can own property
 - Power to incur debt restricted
 - Limits on how they can act
 - Geographic limitations

Municipal Entities

- Types of municipalities
 - Upper Tier
 - Lower Tier
 - Single Tier
- Other municipal entities
 - Local Boards
 - Municipal Service Corporations

Municipal Legislation

- *Municipal Act, 2001**
- *Planning Act*
- *Municipal Elections Act, 1996*
- *Municipal Conflict of Interest Act**
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)**

Municipal Act, 2001

- Municipality can only act through council and by by-law: s.5(1)
- Scope of municipal powers to be interpreted broadly: s.8
- Municipalities have powers of a “natural person”: s.9
- Broad powers to pass by-laws in a number of areas: s. 10, 11(2)

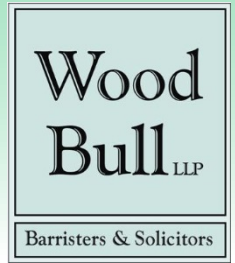
Municipal Act, 2001

- Governance
- Accountability and transparency
- Financial management
- Public assets
- Economic, social, environmental well-being
- Health, safety, well-being of people
- Services and things municipality provides
- Protection of people and property

Municipal Act, 2001

- Powers to pass by-laws allocated between upper and lower-tier municipalities: s. 11(3) & (4)
 - “spheres of jurisdiction”
- By-laws must not conflict with federal or provincial statutes: s.14
 - Test: Impossibility of dual compliance
- Powers of council may be delegated, subject to certain restrictions: s. 23.1–23.5

Roles and Responsibility of Council and Staff



- Role of council: s. 224
 - Represent interests of the public
 - Develop and evaluate policies and programs
 - Determine which services to provide
 - Ensure policies and procedures are in place to implement council decisions
 - Ensure accountability and transparency
 - Maintain financial integrity

Roles and Responsibility of Council and Staff

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Barristers & Solicitors

- Role of the head of council: s. 225 & 226.1
 - Act as CEO of municipality
 - Preside over council meetings
 - Provide leadership to council
 - Represent municipality at official functions

Roles and Responsibility of Council and Staff

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Barristers & Solicitors

- Role of Staff: s. 227
 - Implement council's decisions
 - Undertake research and provide advice to council
- Duties of Clerk: s. 228
- Duties of CAO: s. 229
- Duties of Treasurer: s. 286
- City solicitor: No statutory duties

Roles and Responsibility of Council and Staff

- Staff and council roles distinct
 - Council sets policy direction
 - Staff implements
- Only council as a whole can direct staff
- Some members of staff must act independently
 - Chief Building Official
 - Clerk when conducting an election

Council Meetings and Procedures

- Decisions made by council as a whole at meetings: s. 5(1)
- Decisions are made by by-law or by resolution: s. 5(3)
- One member, one vote: s. 243, 244
- Quorum is a majority of members: s. 237
- Every municipality must have procedure by-law: s. 238

Council Meetings and Procedures

- Meetings must be open to public except where dealing with: s. 239:
 - Security of property
 - Personal matters
 - Acquisition/disposition of land
 - Labour relations
 - Litigation
 - Solicitor–client communications
 - Educational or training sessions
 - Information supplied in confidence from another government

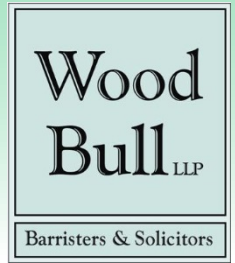
Council Meetings and Procedures

- Meetings must be open to public except where dealing with: s. 239 (cont'd):
 - Trade secrets or scientific, technical, commercial, financial information supplied in confidence
 - Trade secrets or scientific, technical, commercial, financial information that belongs to the municipality
 - Position, plans, criteria or instructions to be applied to negotiations

Council Meetings and Procedures

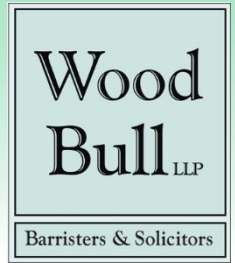
- What is a meeting? s. 238(1):
 - Quorum
 - “Materially advances the business or decision-making” of municipality
- Procedural requirements for closed meetings must be met
 - Resolution re nature of matter: s. 239(4)(a)
 - No substantive vote: s. 239(5) & (6)
- All proceedings must be recorded whether open or closed: s. 239(7)

Council Meetings and Procedures



- Individuals may request investigation into whether meeting properly closed
- Investigation carried out by municipal closed meeting investigator or Ontario Ombudsman

Council Meetings and Procedures



- Confidentiality of closed meeting matters
 - Documents
 - Discussion
 - Minutes
- Confidentiality belongs to municipal corporation as a whole

Council Meetings and Procedures

“The open meeting requirement set out in s. 239 concerns a citizen’s rights to observe municipal government in process and reflects a clear legislative choice for increased transparency and accountability in the decision-making process of local governments.”

- *London (City) v RSJ Holdings Inc.*, 2007 SCC 29

Accountability and Transparency

- Accountability and transparency are paramount principles under *Municipal Act, 2001*
- One component is requirement to have policies dealing with: s. 270:
 - Sale/disposition of land
 - Hiring employees
 - Procurement
 - Notice
 - Accountability/transparency measures

Accountability and Transparency

- Municipalities can ensure accountability and transparency through:
 - Code of conduct (mandatory as of 1 March 2019): s. 223.2
 - Integrity commissioner (expanded role as of 1 March 2019): s. 223.3
 - Ombudsman: s. 223.13
 - Auditor General: s. 223.19
 - Lobbyist Registry: s. 223.9 and s. 223.11
 - Closed meeting investigator: s. 239.2

Accountability and Transparency

- Integrity Commissioner
 - Application of Codes of Conduct to members of Council and Local Boards; application of procedures/rules/policies re ethical behavior
 - As of 1 March 2019 can provide advice
 - As of 1 March 2019 can deal with *MCIA*
 - No legal authority to impose penalties
 - Report to Council or Local Board
 - Penalties: reprimand or suspend remuneration for up to 90 days

Accountability and Transparency

- Auditor General
 - Independently assist Council in holding itself and city administrators accountable for:
 - Quality of stewardship over public funds
 - Achieving value for money in city operations
 - Council may assign powers
 - Duty to furnish information to AG, free access to books and data (no privilege waiver)
 - May examine under oath re audit, examination
 - City auditors do financial statements

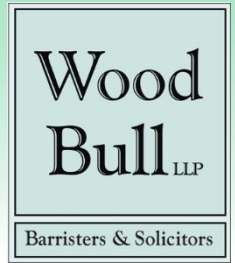
Accountability and Transparency

- Lobbyist Registry / Registrar
 - Registering lobbyists, code of conduct for lobbyists, suspend or revoke registration
 - Advice, education
 - Conduct inquiries

Accountability and Transparency

- Municipal ombudsman
 - Independently investigates any decision, recommendation, act or omission affecting anyone in their personal capacity that occurs in course of administering City, local boards, City-controlled corporations
 - Broad investigative powers: s. 19 of *Ombudsman Act* applies

Accountability and Transparency



- Ombudsman of Ontario
 - Acts as closed meeting investigator for municipalities that do not have investigator
 - Conducts inquiries into other complaints

Legality of Municipal Decisions

- Methods for members of the public to challenge municipal decisions
 - Application to quash by-law: s.273(5)
 - Must be brought within one year
 - Application for Judicial Review
 - Action (i.e. lawsuit)

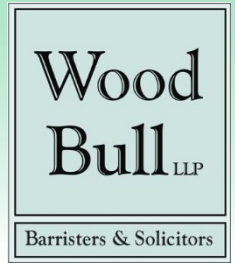
Legality of Municipal Decisions

- Grounds to challenge:
 - Illegality (or ultra vires)
 - Violation of *Canadian Charter of Rights and Freedoms*
 - Division of Powers
 - Vagueness
 - Bad Faith
 - Bias
 - Discrimination

Legality of Municipal Decisions

- Vagueness
 - Reasonable person reasonably informed
- Bad faith
 - Ulterior purpose
- Bias
 - Amenable to persuasion
- Discrimination
 - But s. 8(4) *Municipal Act, 2001*

Municipal Conflict of Interest Act

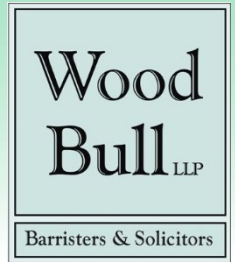


- *MCIA* prohibits members from:
 - Participating in the discussion and vote on any matter in which they have a pecuniary interest
 - Attempting to influence the vote on any matter in which they have a pecuniary interest

Municipal Conflict of Interest Act

- “Pecuniary interest” not defined
- Any interest related to or involving money, without regard to the amount
- Pecuniary interest may be direct or indirect
- Indirect pecuniary interest: s. 2
 - e.g. shareholder in private company with pecuniary interest
- Deemed pecuniary interest: s. 3
 - Pecuniary interest of parent, spouse or child of member, if member has knowledge of the interest

Municipal Conflict of Interest Act



“It is of no consequence, in my opinion, what the nature of the effect [of the member’s participation] might be -- for his betterment or otherwise -- as long as it may be seen by the public to affect that pecuniary interest.”

- *Greene v Borins, [1985] 50 OR (2d) 513 (ONSCJ)*

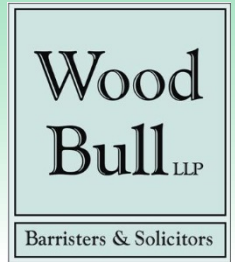
Municipal Conflict of Interest Act

- Exceptions:
 - “Remote or insignificant” – viewed on objective standard: s. 4(k)
 - Interest in common with electors generally: s. 4(j)
 - Salary or expenses of member: s. 4(i)
- New exception – 1 March 2019
 - Member may participate in discussion and attempt to influence vote on motion to suspend pay following contravention of code of conduct
 - But cannot vote

Municipal Conflict of Interest Act

- Member who has a pecuniary interest and is present at meeting must:
 - Disclose the interest: s. 5(1)
 - Not take part in discussion or vote: s. 5(1)
 - Not attempt to influence vote before, during or after meeting: s. 5(1)
 - Leave meeting if meeting is closed: s. 5(2)
- If absent, must disclose at next meeting: s. 5(3)

Municipal Conflict of Interest Act



- New requirements as of 1 March 2019:
 - Member will be required to file written statement when conflict declared: s. 5.1.
 - Municipalities will be required to maintain registry of declarations: s. 6.1

Municipal Conflict of Interest Act

- ▶ Elector can apply to court for declaration member breached *MCIA*
- ▶ As of 1 March 2019 can also apply re former member
- ▶ Currently *MCIA* requires judge to declare seat vacant if breach found
 - Exceptions only for error of judgment, inadvertence
- ▶ As of 1 March 2019 judge will have discretion re penalty
- ▶ As of 1 March 2019 elector can also apply to Integrity Commissioner

Municipal Records

- Records may be inspected at any time by public: s. 253(1)
- Municipality must preserve and maintain records in accessible manner: s. 254
- May pass record retention by-law to establish retention period: s. 255(1)–(3)

MFIPPA

- Municipal records subject to *MFIPPA*
- Purpose of *MFIPPA*: s. 1(1)
 - To provide right of access to government records
 - To protect privacy of personal information
- Record broadly defined: s. 2(1)
 - Emails, texts, notes can all be records
- Draft by-laws, records of closed meeting deliberations exempt: s. 6

- *MFIPPA* sets out procedure for seeking access to records:
 - Access request
 - 3rd party notice (if required)
 - 30 day response deadline (can be extended)
 - “head” of institution makes decision
 - Appeal to Information and Privacy Commissioner

Municipal Records / MFIPPA

- Councillors' constituency or political records generally not subject to *MFIPPA*
- BUT councillor records related to municipal business can be subject to *MFIPPA*
- Mayor's records are subject to *MFIPPA* and can be disclosed
 - Mayor is an "officer" for purposes of MFIPPA
- Members of council have no special right of access to records

- Municipality can't disclose personal information except as permitted by s. 32, including:
 - In accordance with the access process under *MFIPPA*;
 - For the purpose for which it was obtained or a consistent purpose;
 - To allow an employee/officer to carry out duties;
 - To comply with federal or provincial law
- Individuals have a right of access to their own personal information and to request corrections to that information: s. 36

QUESTIONS?

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