



WeirFoulds^{LLP}

**City of Markham
Council Orientation Workshop
Governance and Council Responsibilities**

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Municipal Powers and Jurisdiction

- Municipal governments are unique
“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 (cont'd)

- No constitutional status
 - Powers limited by statute
- Corporations but not like business corporations
 - Can sue and be sued
 - Can own property
 - But power to incur debt controlled
 - Also limitations on how they can act

Municipal Act, 2001

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

Municipal Act, 2001 (cont'd)

- Governance structure
- Accountability/transparency
- Financial management
- Public assets
- Environmental/social/economic well-being
- Health/safety
- Services and things municipality provides
- Protection of people and property

Municipal Act, 2001 (cont'd)

- Powers to pass by-laws allocated between upper and lower tiers: s. 11(4)
- By-laws can't conflict with federal or provincial statutes: s. 14
- Powers can be delegated: s. 23.1-23.5

Planning Act

- Planning is a Provincial policy-led system
 - Matters of Provincial interest
 - PPS
 - Growth Plan/Greenbelt Plan
- Planning Act sets out processes and tools for controlling development
 - Official plan
 - Zoning by-law
 - Site plan control
 - Plan of subdivision

Planning Act (cont'd)

- Public process in most cases
- Council's role to receive reports from Staff, consider views of interested parties and make decision
- Legislative role but must act fairly
- OMB's role to hear appeals from decisions, stands in shoes of council

Challenges to Municipal Decisions

- Decisions can be challenged various ways
 - Application to quash – within one year
 - Application for judicial review – no time limit
 - Action – within 2 years

Challenges to Municipal Decisions (cont'd)

- Grounds for challenge
 - Illegality/*ultra vires*
 - Violation of *Charter*
 - Division of powers
 - Vagueness
 - Bad faith
 - Bias
 - Discrimination

Roles of Council and Staff

- Role of council set out in s. 224 of *Municipal Act*
- Role of head of council set out in s. 225 & s. 226.1
- Head is the CEO of municipality
- Role of staff set out in s. 227

Roles of Council and Staff (cont'd)

- Staff and council roles distinct
 - Council sets policy direction
 - Staff implements
- Only council as a whole can direct staff
- Some members must act independently
 - CBO
- Many are professionals and governed by their own professional standards

Council Meetings and Procedures

- Decisions made by council as a whole, at meetings
- Made by by-law or resolution
- One member, one vote
- Quorum is majority of members
- Every municipality must have procedure by-law

Council Meetings and Procedures (cont'd)

- Meetings must be open to public except where dealing with:
 - Security of property
 - Personal matters
 - Acquisition/disposition of land
 - Labour relations
 - Litigation
 - Solicitor-client communications
 - Educational or training sessions

Council Meetings and Procedures (cont'd)

- Procedural requirements for closed meetings must be met
- Closed meeting matters are confidential
- Confidentiality belongs to municipal corporation – can't be waived except by council as a whole

Accountability and Transparency

- Paramount principles under *Municipal Act*
- One component is requirement to have policies dealing with:
 - Sale/disposition of land
 - Hiring employees
 - Procurement
 - Notice
 - Accountability/transparency measures

Accountability and Transparency (cont'd)

- Municipalities allowed to ensure transparency through
 - Code of conduct
 - Integrity Commissioner
 - Ombudsman
 - Auditor General
 - Lobbyist Registry
 - Closed Meeting Investigator

Accountability and Transparency (cont'd)

- Municipality is entitled to pay salary and expenses of council members
- Treasurer must provide itemized statement of salary and expenses each year
- Statement is a public record

Municipal Conflict of Interest Act

- Prohibits members from:
 - Participating in discussion and voting on matter in which they have a pecuniary interest
 - Attempting to influence the vote on matter in which they have a pecuniary interest
- Pecuniary interest not defined – interpreted as any interest relating to money

Municipal Conflict of Interest Act (cont'd)

- Pecuniary interest can be direct or indirect (i.e. as shareholder)
- Pecuniary interest of spouse or child deemed to be interest of member
- Exceptions:
 - “Remote or insignificant” – viewed on objective standard
 - Interest in common with electors generally
 - Salary or expenses of member

Municipal Conflict of Interest Act (cont'd)

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

Municipal Conflict of Interest Act (cont'd)

- If MCIA is breached, judge **MUST** declare member's seat vacant
- Exception only if breach was inadvertent or error in judgment
- Important to be vigilant about conflicts
- Can't rely on municipal staff to advise you



Municipal Records/MFIPPA

- Records may be inspected at any time by public
- Municipality must preserve and maintain records in accessible manner
- May pass record retention by-law to establish retention period
- Municipal records subject to MFIPPA

Municipal Records/MFIPPA (cont'd)

- Purpose of MFIPPA
 - To provide right of access to government records
 - To protect privacy of personal information
- Record broadly defined
 - Emails, texts, notes can all be records
- Personal information includes address, employment history, financial information etc.

Municipal Records/MFIPPA (cont'd)

- MFIPPA sets out procedure for seeking access to records
- Access decisions made by “head”
- Head makes decision independently, in accordance with MFIPPA requirements
- Councillors’ constituency or political records generally not subject to MFIPPA

Municipal Records/MFIPPA (cont'd)

- BUT councillor records about municipal business can be subject to MFIPPA
 - Can be disclosed
- Mayor's records ARE subject to MFIPPA and can be disclosed
- Members of council have no special right of access to records
- Restrictions on ability to collect and disclose personal information

Elections/Election Finance Reporting

- Restrictions under *Municipal Elections Act* respecting campaign finances
 - Contributions only during campaign period
 - Requirement to keep records
 - Formula for maximum campaign expenses
 - Requirement to file financial statement & auditor's report by 2 pm last Friday in March
 - Surplus must be paid to clerk

Elections/Election Finance Reporting (cont'd)

- Penalties if candidate fails to comply
 - Forfeit office
 - Declared ineligible to run until next election
 - Possible fine up to \$25,000
 - BUT judge can relieve from penalties if breach inadvertent or error in judgment
- Elector may apply to council for compliance audit
- Elector may apply to court for declaration election invalid

Other Areas

- *Accessibility for Ontarians with Disabilities Act*
 - Accessibility standards for people with disabilities
 - Municipalities with more than 10,000 people must establish accessibility advisory committee
 - Council must prepare an accessibility plan

Other Areas (cont'd)

- *Public Sector and MPP Accountability and Transparency Act*
 - Bill 8
 - Has received 3rd reading
 - Gives Provincial Ombudsman enhanced jurisdiction to oversee municipalities

Other Areas (cont'd)

- *Protection of Public Participation Act*
 - Bill 52
 - Has received 1st reading
 - Aim is to discourage “SLAPP” lawsuits
 - Fast track review process to dismiss SLAPP suits

Other Areas (cont'd)

- Workplace Violence and Harassment
 - *Occupational Health and Safety Act* requires employers to have policies dealing with workplace violence and harassment
 - Employers required to develop programs to implement the policies and to assess risk of workplace violence

Other Areas (cont'd)

- *Ontario Human Rights Code*
 - Applies to municipalities and by-laws
 - Prohibits discrimination based on grounds in *Code* in a number of areas, including services, accommodation, employment
 - Grounds include race, ethnic origin, sex, sexual orientation, age, disability
 - Relevant to municipality as employer and council as legislative body

Other Areas (cont'd)

- *Canadian Charter of Rights and Freedoms*
 - Part of Constitution
 - Applies to government action
 - Laws inconsistent with *Charter* of no force or effect
 - Rights protected include freedom of religion, freedom of expression, right to equality



Other Areas (cont'd)

- *Charter* (cont'd)
 - Property rights not protected
 - Rights subject to reasonable limits under section 1
 - Process important to establish a limit on a protected right is reasonable



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Questions?