

Municipally-Owned Corporations

Collingwood Judicial Inquiry

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*the opinions presented are those of the individuals and do not in any way reflect the organizations that the Panel are employed by

Municipal Act, 2001

- Municipalities are responsible and accountable governments with respect to matters within their jurisdiction; s.2
- Municipal powers are exercised by Council; s.5
- Municipalities have “Natural person powers”; s.9
- Municipalities may establish municipal service boards; s.196
- Local services boards can be established by Minister’s order under the Northern Services Board Act
- Municipalities have specific powers to establish corporations; s.203 and O.Reg. 599/06 [City of Toronto Act, 2006 s.148]
- Municipalities also derive authority to own corporations from other legislation including the Electricity Act,

Municipal Corporations – Examples of Types

- Ontario Business Corporations Act
- Ontario Corporations Act (not-for-profit)
- Economic development corporations
- Tourism corporations
- Holding company
- Identified service that the municipality could provide itself
- Join together with other public sector bodies to provide a service within the jurisdiction of the entities
- Ontario Electricity Act, 1998 and local distribution companies

Role of Municipality in Municipal Corporations

O.Reg. 599/06 provides the following responsibilities:

- Authorize a person to incorporate
- Nominate or authorize persons to be on the Board of Directors
- Nominate or authorize persons to act as a member of a corporation
- Limits municipal activities related to specified types of municipal corporations, for example those related to police, fire, ambulance, library, health, long term care services
- Contains rules regarding financial assistance a municipality may provide
- Identifies such corporations as a local board for purposes of specific legislation including the Municipal Conflict of Interest Act, MFIPPA

Municipal LDC hydro Corporations

- Electricity Act 1998 required municipalities to transfer their hydro assets to OBCA corporations
- Subject to regulatory oversight including rate setting by the Ontario Energy Board and approval of any mergers, acquisitions, amalgamations and divestitures
- As an OBCA corporation, the shareholder(s) provide oversight through the Board of Directors
- As a shareholder, the municipality receives dividends and has the rights to vote on mergers, acquisitions and similar changes to the corporation

What are Municipal Service Boards/Local Boards?

- Municipal Act, 2001 s.195 authorizes Council to delegate all or part of its powers related to municipal services to a municipal services board
- Municipal services boards are corporations and have certain independence set out in legislation –special purpose bodies
- Examples include public utilities, waste management, parking, parks and recreation facilities, transportation systems
- Council appoints members to a Board to oversee the operations and fills vacancies on the board
- Surplus funds are transferred to the municipality when requested, and the Board is required to provide information requested by the municipality

Board Composition –Best Practices

- Blend of independent subject-matter experts and municipal council members or staff
- Composition that brings awareness of industry best practices as well as local government “big picture”

Best Practice Principles of Governance for Crown Corporations,
by Guy Holburn and Adam Fremeth of the Ivey Business School Energy Policy
and Management Centre

While they operate similar to private sector businesses, government ownership can mean company is impacted by political factors

Recommends Board selection that is

- 1) Merit based selection –objective assessment of skills and qualifications;
- 2) Transparent –clear and understandable process;
- 3) Consistent –appointment process applied consistently;
- 4) Integrity –appointees to be committed to the principles and values of public service and perform duties with integrity

Best Practice Principles of Governance for Crown Corporations,
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Management Centre (cont'd)

- Skills matrix to identify experience and competencies of individual directors and of the Board
- Staggered appointments to ensure continuity and experience
- Orientation and training for all (new and renewed) Board members including role of the Board and expectations for individual directors
- Majority independent from management to ensure functions in best interests of corporation
- Public servants and elected officials bring knowledge of government priorities but Board must be aware of oversight conflicts, and consider voting eligibility and involvement during *in camera* sessions

Members of Council and Municipal Staff

- Bring context of municipal priorities and local perspective
- Members of Council are subject to *Municipal Conflict of Interest Act* and to mandatory Council Code of Conduct rules and principles
- Most municipalities have a Code of Conduct equivalent for staff to assess conflicts, among other matters
- Council-Staff relationship policy is mandatory
- Training and policy guidelines are often available

Municipal Direction

- Council resolution to communicate a public interest identified by Council
- Shareholders' Direction under OBCA to require compliance